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Fifth District

November 15, 2006

To: Mayor Michael D. Antonovich  
Supervisor Gloria Molina  
Supervisor Yvonne B. Burke  
Supervisor Zev Yaroslavsky  
Supervisor Don Knabe

From: David E. Janssen  
Chief Administrative Officer

**MARINA DEL REY - MELLO ACT POLICY OPTIONS (ITEM NO. 11, AGENDA OF AUGUST 1, 2006)**

On August 1, 2006, your Board, on a motion by Supervisor Knabe, directed my office to report back on the following:

- 1) Work with the task force to finalize the proposed Marina del Rey Affordable Housing Policy; and
- 2) Prepare the necessary environmental documentation with comments and proposed revisions from interested parties and the public for the Board's consideration within 90 days.

Additionally, County Counsel was instructed to work with the Task Force to devise an Affordable Housing Policy options document for your Board's review prior to voting on the final policy.

The attached report identifies a range of policy options that the Board may consider to select a draft policy. The report indicates where the draft policy provisions fit within the range of policy options, and evaluates the consistency of the draft policy with Mello Act requirements. The range of policy options reflects the public input received by the Task Force on the draft policy.

### **Background**

On April 4, 2006, your Board directed my office to form and lead a task force comprised of the Directors of the Departments of Beaches and Harbors, Regional Planning, the Community Development Commission and County Counsel, to review the County's current Marina del Rey Affordable Housing Policy and report back to your Board with proposed revisions and/or recommendations to the current policy to ensure full compliance with Mello Act requirements. Following a series of meetings and discussions with the Task Force, and taking into account input received from your staff, on June 22, 2006, we transmitted to you a draft affordable housing policy for your consideration. On September 7, 2006, the Task Force convened a community forum at Burton Chace Park in Marina del Rey, in which the Task Force made a brief presentation on the draft policy and received input from attendees.

### **Public Outreach on the Draft Policy**

In response to comments from you at your meeting on August 1, 2006, the task force organized and held a community forum at Burton Chace Park in Marina del Rey on the evening of September 7, 2006. The task force was present at the community meeting and presented the draft Mello Act policy and received public comments. Meeting notices were mailed to a comprehensive list of individuals and groups that the Departments of Beaches and Harbors and Regional Planning identified as having an interest in Marina del Rey development and the Marina affordable housing policy. An announcement was printed in the local newspaper, *The Argonaut*, and the draft policy was made available on the website of the Department of Beaches and Harbors.

It is estimated that over 60 people attended the meeting, including residents of Marina del Rey and neighboring communities, affordable housing advocacy groups, representatives for the Marina lessees, other concerned individuals, and county staff. After a presentation by a representative from the Chief Administrative Office, public testimony was received by approximately 20 people. A written transcript of the meeting and correspondence received from the public are included with the report.

### **Recommendations**

It is recommended that the environmental documentation for the draft policy not be prepared until after the task force has prepared a final draft policy based on your direction. Environmental review of the draft policy pursuant to the California Environmental Quality Act (CEQA) is appropriate to initiate once the policy parameters are known.

Each Supervisor  
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The task force recommends that your Board conduct a public hearing to obtain feedback on the range of options and to allow for discussion and action by the Board, with instructions to the Chief Administrative Officer for preparing the final policy and environmental documentation. In order to finalize the policy as a "project" for the purposes of completing the CEQA review, it is necessary to incorporate any Board decisions in the draft policy. It is also appropriate to obtain public input at a public hearing since the range of options resulted in large part from input from the community and various stakeholders groups that have commented on the draft policy.

If you have any questions regarding this matter, please contact me or your staff may contact John S. Edmisten, of my staff, at (213) 974-7365.

DEJ:JSE  
SHK:mdc

#### Attachments

c:     Executive Officer, Board of Supervisors  
        Beaches and Harbors  
        Community Development Commission  
        County Counsel  
        Regional Planning

11/15/06

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**REPORT TO THE  
LOS ANGELES COUNTY  
BOARD OF SUPERVISORS**

**MELLO ACT POLICY OPTIONS**

**November 2006**

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This report provides the background for the Chief Administrative Officer's response to the Board motion, dated August 1, 2006, to report back on the following:

- 1) Work with the task force to finalize the proposed Marina del Rey Affordable Housing Policy; and
- 2) Prepare the necessary environmental documentation with comments and proposed revisions from interested parties and the public for the Board's consideration within 90 days.

Additionally, County Counsel was instructed to work with the task force to devise an Affordable Housing Policy options document for your Board's review prior to your Board's consideration of the environmental document and draft policy.

This report provides the affordable housing policy options document that was prepared by the task force in conjunction with County Counsel. It also discusses how the County, in compliance with the Mello Act, has developed a draft affordable housing policy for Marina del Rey, and has also responded to the Board's request to identify and evaluate a corresponding range of policy options. With this information, the Board may consider "fine tuning" the draft policy, as it deems appropriate, to accomplish policy objectives in a manner that is reasonable when weighed with the county's proprietary role as landowner and lessor.

It is recommended that environmental review of the draft policy pursuant to the California Environmental Quality Act (CEQA) not commence until after the task force has revised the draft policy in accordance with any further direction your Board may provide at this time, in order to better define the "project" for purposes of completing the CEQA review.



This further consideration of the draft policy by your Board will also provide the public an additional opportunity to comment on the draft policy. In addition, public comment may be submitted during the environmental review period.

## **BACKGROUND**

### **Task Force Review of Current Policy**

On April 4, 2006, your Board directed the Chief Administrative Officer to form and lead a task force comprised of County Counsel and the Directors of the Departments of Beaches and Harbors, Regional Planning and the Community Development Commission, to review the County's current Marina del Rey Affordable Housing Policy and report back to your Board with proposed revisions and/or recommendations to the current policy to ensure full compliance with Mello Act requirements. Following a series of meetings and discussions with the task force, and taking into account input received from your staff, on June 22, 2006, we transmitted to you a draft affordable housing policy for your consideration.

### **Public Comments on the Draft Policy**

#### **Synopsis of Community Meeting**

In response to comments from you at your meeting on August 1, 2006, the task force organized and held a community forum at Burton Chace Park in Marina del Rey on the evening of September 7, 2006. The task force was present at the community meeting and presented the draft Mello Act policy and received public comments. Meeting notices were mailed to a comprehensive list of individuals and groups that the Departments of Beaches and Harbors and Regional Planning identified as having an interest in Marina del Rey development and the Marina affordable housing policy. An announcement was printed in the local newspaper, *The Argonaut*, and the draft policy was made available on the website of the Department of Beaches and Harbors.

It is estimated that over 60 people attended the meeting, including residents of the Marina and neighboring communities, affordable housing advocacy groups, representatives for the Marina lessees, other concerned individuals, and county staff. After a presentation by a representative from the Chief Administrative Office, public testimony was received by approximately 20 people. A transcript of the staff presentation and oral testimony at the community meeting is provided in

**ATTACHMENT 1.** Written correspondence received regarding the draft policy is provided in **ATTACHMENT 2.**

The County has received oral and written public comments regarding the draft policy. The issues raised at the community meeting are similar to those raised by the Western

Center on Law and Poverty and other housing advocates (collectively referred to as the “Housing Advocates”) and by Latham and Watkins (representing a local developer) at your meetings on July 25, 2006 and August 1, 2006 where your Board discussed the draft policy. The issues raised regarding the draft policy have been considered by the Marina affordable housing task force in identifying and discussing the policy issues contained in this report. A response-to-comments document is provided in **ATTACHMENT 3.**

## **LEGAL REQUIREMENTS**

The continuing lack of housing affordable to a broad range of incomes, particularly within areas in and around the coast, as well as widespread dissatisfaction among local governments with the California Coastal Commission’s handling of affordable housing policy, prompted the passage in 1981 of a statewide coastal affordable housing law known as the Mello Act.<sup>1</sup>

The Mello Act transferred responsibility for affordable housing in the Coastal Zone from the Coastal Commission to each jurisdiction whose boundaries include a portion of the Pacific Ocean coastline, as defined by the Coastal Act of 1972, as amended. The Mello Act requires that each local government whose jurisdiction is situated, in whole or in part, within the Coastal Zone has the responsibility to both provide for replacement housing units when existing affordable housing is converted or demolished, and support the creation of affordable housing units through new construction in a manner consistent with the Act. Compliance is required for that portion of a jurisdiction which is located within the Coastal Zone.

The Mello Act is intended to provide local jurisdictions with discretion in imposing affordable housing requirements in the Coastal Zone, because each situation presents some unique facts and public policy considerations. The Mello Act must be implemented in conjunction with various other State mandates, such as the California Coastal Act, the California Environmental Quality Act (CEQA), State Density Bonus Law, and Statewide Housing Element Law.<sup>2</sup> Although the Mello Act references housing element law, to harmonize its requirements with the broader mandate for local government planning efforts aimed at providing adequate housing for the broad range of economic segments within each local jurisdiction, the Act does not provide similar clarity as to how Coastal Act and CEQA requirements affect the implementation of the Mello Act.

As a local government entity, the County must reconcile these often conflicting state mandates when approving housing developments within the Coastal Zone on a project-by-project basis. It is not possible to develop an affordable housing policy today that can predict, with certainty, the housing that will be constructed in the future. Therefore, it

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<sup>1</sup> California Government Code Section 65590, *et seq.*

<sup>2</sup> Article 10.6 (commencing with Section 65580) of the Government Code.

is appropriate for the County to establish a Mello Act policy that is flexible enough to implement over time and through a process that considers the uniqueness of each project and site.

## **POLICY ISSUES**

In general, the issues raised in the public comments received to date are not directly addressed in the Mello Act or the case law interpreting the Mello Act, but rather are matters of policy for your Board to consider. The draft policy as currently formulated meets the legal requirements of the Mello Act, and can be lawfully adopted so long as appropriate findings are made in support of the policy. To provide you with the ability to fine tune the draft policy, a comparison table is included in **ATTACHMENT 4**, which identifies and compares the legal requirements under the Mello Act to both the draft policy and various policy options. The arguments for and against the policy options are identified for each general issue.

### **Feasibility**

The Mello Act applies to the demolition, conversion, and construction of housing within the Coastal Zone, and is intended to both preserve existing affordable housing for persons and families of low and moderate income and create new affordable housing where such housing is feasible.

The basic requirements of the Mello Act are:

1. Replacement of converted or demolished residential units that are occupied by persons or families of low or moderate income (referred to as “replacement units”);
2. Demolished or converted residential structures may only be replaced with a non-residential use if it is determined that a residential use is no longer feasible at that location; and
3. New housing developments, where feasible, must provide housing units for persons and families of low or moderate income (referred to as “inclusionary units”).

Pursuant to the Mello Act, replacement units must be located on-site or elsewhere in the Coastal Zone if feasible otherwise they must be located within three miles of the Coastal Zone (referred to as the “extended coastal zone”). Inclusionary units must be provided on-site, unless it is not feasible to do so. If it is not feasible to provide the inclusionary units on-site, they must be located within the Coastal Zone or within the extended Coastal Zone, if feasible.

The Mello Act defines “**feasible**” as “*capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technical factors.*”

Only two cases have interpreted the Mello Act. In *Venice Town Council, Inc. v. City of Los Angeles*, 47 Cal.App.4<sup>th</sup> 1547 (1996), a challenge to the City of Los Angeles’ implementation of the Mello Act, the court held that the City had a mandatory duty to comply with Mello Act requirements by making certain factual determinations, including the determination of the number of replacement units and determinations of feasibility, and to take certain actions based on those determinations.

In *Coalition of Concerned Communities, Inc. v. City of Los Angeles*, 34 Cal.4<sup>th</sup> 733 (2004), the court held that the Mello Act did not apply to a project which did not have housing impacts within the Coastal Zone, where the challenged project was partially within the Coastal Zone but no housing was proposed for the Coastal Zone portion of the project.

Neither of these cases provides much guidance concerning the particular issues raised by the public regarding the draft policy.

In public comments, concerns were raised that the draft policy is deficient because it fails to address the methodology and threshold for determining a project’s feasibility with or without income-restricted units. We believe the draft policy on feasibility is legally sufficient.

As stated previously, the Mello Act defines “feasible” in a manner that considers four factors that encompass a broad range of experience. Accordingly, the Mello Act focuses on whether a project can be accomplished successfully in a reasonable period of time, taking into account those factors, not just the economics of a project.

Based on this broad, qualitative definition, and because of the uniqueness of projects within the Marina, the task force concluded that it was preferable to provide a basic methodology in the draft policy for determining feasibility, rather than providing a specific formula or threshold.

Contrary to comments received from the Housing Advocates, the draft policy is not silent on a project’s feasibility. Rather, it requires the applicant to submit detailed information to the County for purposes of determining a project’s feasibility. This information must include:

1. An evaluation of the impacts created by available incentives (such as density bonuses and available state and local assistance programs);
2. An estimate of the developer’s return that would be generated by the project, which will be compared to a feasibility factor equal to the capitalization rate for apartment sales in Los Angeles County plus up to 200 basis points; and

3. An evaluation of whether the project can be successfully completed within a reasonable period of time, taking into account economic, environmental, social, and technical factors.

This approach is consistent with the requirements of the Mello Act.

In public comments, concerns were also raised that the draft policy does not quantify a specific County commitment to reduce ground lease rent to make on-site affordable units feasible. The proposed policy states that the County is willing to reduce its ground lease rent on inclusionary units, but it does not provide a specific percentage or maximum amount of rent the County is willing to forgo to make a project feasible. Concerns were also raised that if there is no maximum level of County concessions identified, then a methodology for determining feasibility cannot be established.

According to the Mello Act, the County is required to “offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees” in order to assist in the provision of inclusionary housing units. With the County as the landowner and lessor in Marina del Rey it is in a unique position to offer rent concessions, if needed, as “other incentives” to achieve feasibility for a project.

The extent to which the provision of inclusionary housing units is feasible can initially be determined independent of any County rent concessions. The applicant should first factor in the provision of density bonuses and any source of funding or financing for affordable housing that the applicant seeks to determine feasibility. In the event that the provision of inclusionary housing units is determined to be infeasible on-site, or off-site within the Coastal Zone or within three miles thereof, the County will work with the applicant on a case-by-case basis to consider additional incentives and concessions, including ground lease rent concessions, to contribute to the feasibility of providing inclusionary housing units.

While the County has the ability to contribute to the feasibility of affordable housing developments in the Marina through rent concessions, this has a corresponding negative consequence of reducing lease revenue to the County, which revenue funds other County social programs of county-wide significance. The Board must consider how increasing the number of affordable housing units in the Marina, the Coastal Zone, or within the extended Coastal Zone, will impact its county-wide social programs. The task force believes that the goals and requirements set forth in the draft policy provide a reasonable balance between these competing public interests.

### **Parameters**

Compliance with the Mello Act can be achieved within a range of actions based upon a number of factors. As shown in **ATTACHMENT 4**, the task force’s policy recommendations can be compared side-by-side next to both the Mello Act

requirements and the range of various options to identify where the recommended policy fits within that range. The County has the flexibility to set the policy parameters within the range of options that are consistent with the Mello Act. Important factors to consider for the County's Mello Act implementation program include:

- Local Implementation
- New Construction Requirement (Inclusionary)
- Calculation Method
- Replacement Housing
- Location of Units
- Rehabilitation
- Duration of Affordability
- Housing Tenure
- In Lieu Fees
- Off-Site Compliance
- Stakeholder Input

### **Local Implementation**

In public comments, it was noted that the Mello Act is intended to provide local jurisdictions with discretion in imposing affordable housing requirements in the Coastal Zone and the County is not legally required to reexamine the existing rules upon which developers of proposed projects have reasonably relied. The Mello Act clearly states that ordinances or programs are not required to implement the statute's provisions. However, a policy has the positive consequence of creating certainty for the development community as to what requirements will apply to future development projects. Without certainty, projects may fail due to prolonged predevelopment expenses and difficulty in securing the necessary financial backing to construct more housing. The Mello Act acknowledges the need for certainty and predictability by defining feasibility in terms of whether a project can be completed in a "successful" manner within a "reasonable" period of time. The task force agrees that without a clear policy, housing production in the Marina could be inhibited.

Public comments were also received that emphasized the need for clearly defined feasibility criteria. Prolonged debate over a project's feasibility can cause developers and housing advocates to spend inordinate amounts of time and resources on lengthy reports, competing experts, and litigation, while the housing crisis worsens. The County has the discretion to limit debate by adopting a uniform methodology for making feasibility determinations based on objective parameters and establishing a clear procedural path. We agree that clarity is needed and believe that the draft policy provides a uniform set of requirements and goals that apply to future developments in a reasonable manner.

The Mello Act does not require local jurisdictions to establish a "one size fits all" approach, but authorizes local jurisdictions to adopt programs that are specifically

tailored to address local needs. By updating the policy as proposed by the task force, the County can provide affordable housing in the Coastal Zone through a flexible regulatory program that provides affordable housing without unduly limiting new market rate supply while appropriately balancing its need to responsibly generate revenues for County programs.

### **Inclusionary Unit Goals**

The draft policy requires that each residential project set aside a percentage of the new units as affordable units, subject to an analysis of feasibility on a case-by-case basis. The draft policy recommends a County goal of either five (5) percent very low income units or ten (10) percent low income units. The County could require a higher or lower percentage of inclusionary units based on the feasibility analysis. In public comments, concerns have been raised that the draft policy reduces the total number of units to which the inclusionary calculation applies, since the current Marina affordable housing policy requires 10 percent low income units, and the draft policy requires only 5 percent very low income units.

The Mello Act does not set forth any percentages, minimum number of units, or other formulas for complying with the inclusionary requirement. The Mello Act provides that: *"New housing developments constructed within the Coastal Zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in section 50093 of the Health and Safety Code."* Likewise, the Mello Act does not dictate that the required housing be set aside for a particular income category or all income categories included in the definition of "low or moderate income" under the Health and Safety Code (those categories are very low, low, and moderate income).

The draft policy has not eliminated the goal of 10 percent low income units, rather it adds an alternative goal of 5 percent very low income units. The addition of the proposed goal of 5 percent very low income units provides consistency with the State's current density bonus provisions which require that mandatory development benefits and concessions be provided to any developer who is willing to set aside 5 percent of the project's units for very low income persons.

In a legal opinion prepared by the State Department of Housing and Community Development ("HCD") for implementation of the Mello Act, HCD advises that local governments may either conduct a feasibility analysis on a case-by-case basis for individual projects or conduct a comprehensive study to establish set inclusionary housing requirements in advance. Given the small number of residential projects anticipated in the Marina in the near future, and the cost and consumption of time of conducting a full feasibility analysis prior to adoption of the draft policy, the task force is recommending a feasibility analysis for each project, coupled with goals that provide developers with some indication of the County's objectives. We believe this is legally defensible and consistent with the Mello Act's provisions regarding feasibility.

In public comments, concerns have been raised that the County's affordable housing policy for the Marina should mirror that of the City of Los Angeles, which requires 10 percent very low income inclusionary units or 20 percent low income inclusionary units. The City of Los Angeles' policy, however, is an interim policy adopted pursuant to a settlement agreement entered into by and between the City and the Housing Advocates. The City has recently completed a comprehensive feasibility analysis for implementation of its permanent coastal affordable housing ordinance. The City's draft ordinance, which covers Pacific Palisades, the Venice-Playa del Rey area, and the San Pedro-Harbor area, is currently available for public review and proposes a set requirement of 10 percent very low income inclusionary units or the payment of in-lieu fees specific to each coastal community. Notably, the City's draft ordinance excludes all rental developments from its inclusionary housing requirement. The City's coastal communities generally consist of lower-density neighborhoods that are inherently different than higher-density Marina del Rey. The City Planning Commission considered the draft ordinance at a public hearing on November 9, 2006, but continued the item to January 11, 2007.

### **Calculation Method**

The County's draft policy requires the percentage of affordable inclusionary units to be calculated based on the *net incremental new units* to be constructed or converted on the project site. The net incremental new units are calculated by subtracting any existing units (prior to demolition or conversion) and then determining the inclusionary obligation based on the remainder. The draft policy separately requires the replacement of existing units occupied by persons or families of low or moderate income that are converted or demolished. In public comments, concerns have been raised that the draft policy is flawed because the calculation of inclusionary units subtracts out the existing units. However, public support has also been received for this calculation method from local developers and Marina lessees who believe the calculation method is fair and will not inhibit the reuse and redevelopment of Marina parcels.

The Mello Act does not set forth any formula for complying with the inclusionary requirement. We believe the draft policy is consistent with the Mello Act, which creates separate obligations for units that are converted or demolished and for units that are new housing. Establishment of a base for calculating the number of inclusionary units is a matter of policy. The County's existing policy requires that 10 percent of all the units constructed /reconstructed on-site be income-restricted, without deduction of replacement units. The City of Los Angeles' interim policy provides that the percentage inclusionary requirements are based on the total number of new-reconstructed units less any required replacement units. We believe that a base that consists of all units constructed, all units less the number of replacement units, or the net incremental new units only, are all legally defensible, so long as inclusionary units are provided where feasible.



## **Replacement Housing**

### *Consideration of Bedrooms in Determining Replacement Units*

In public comments, concerns have been raised that it is improper for the draft policy to provide for the replacement of bedrooms rather than whole units where one occupant is determined to be of low or moderate income.

The Mello Act provides that if “an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income.” However, the Mello Act does not establish a formula for calculating how the requirements apply to portions of units. To ensure that replacement obligations for portions of units are met, the draft policy looks at the number of qualifying occupants in relation to the number of bedrooms, to determine whether any person or family in that unit qualifies as a low or moderate income person or family. Thus, if two unrelated persons occupy a two-bedroom unit and one occupant is a person of low or moderate income and the other person is not, the draft policy requires that a one-bedroom unit be replaced rather than a two-bedroom unit. We believe that this is a reasonable interpretation of the Mello Act.

### *Replacement Units for Sub-tenants, Resident Managers, Students and Vacant Units*

In determining an applicant’s replacement unit obligation, the draft policy excludes from consideration those units occupied by sub-tenants not named on the lease, those units occupied by resident managers, units that are vacant at the commencement of term sheet negotiations, and students whose parents claim them as dependents or whose parents guarantee the rent. In public comments, concerns have been raised that these exclusions are improper, but we believe they are legally permissible.

The Mello Act does not address this specific issue and provides no guidance as to how to survey the existing units in a building to determine if they are occupied by persons or families of low or moderate income. The task force concluded that, regarding sub-tenants, for purposes of conducting the survey and as a matter of fairness, it was appropriate to include for consideration only those occupants named on the original lease between the landlord and the original tenant(s), and family members/domestic partners of those original tenants. The landlord has a contractual relationship only with persons named on the lease, and could most efficiently conduct the tenant survey only as to those persons. Moreover, it is entirely possible that the landlord may have no knowledge of sub-tenants living in the unit nor approve of such occupancy, and therefore should not be required to provide an income-restricted unit based on the income level of those sub-tenants.

As for resident managers, they are generally not considered "tenants" in the landlord/tenant context, but instead, they are classified as employees. Hence, the task force concluded that it was appropriate to exclude from consideration the resident manager units because the focus of the Mello Act is replacing units for low or moderate income occupants that are tenants, not employees.

As for units that are vacant at the commencement of term sheet negotiations, the vacant units would not be required to be replaced under the Mello Act as there is no low or moderate income person or family residing in the unit. A safeguard against abuse exists in the Mello Act, which requires an affordable replacement unit for each vacancy resulting from an eviction from that dwelling unit within one year prior to the filing of an application to convert or demolish the unit if the eviction was for the purpose of avoiding the statutory requirements, and creates a presumption in favor of designating such units as replacement units if a significant number of evictions occur in that time period.

As for students whose parents claim them as dependents or whose parents guarantee the rent the task force concluded that it was reasonable not to solely consider the student's income for purposes of determining replacement unit eligibility. Students who are financially dependent on their parents but are seeking higher education are not generally reflective of the low or moderate-income individual that the Mello Act is intended to protect. Many, if not most, of these students will have substantially greater earning capacity when they complete school so the task force found that considering their income alone while in school would not be warranted. Instead, the task force decided that it was appropriate to aggregate the student's income with his/her parents' income to determine replacement unit eligibility.

### *Replacement Housing for Related Roommates*

The task force's goal was to establish clear guidance for conducting the tenant surveys to ensure that they would be conducted efficiently and accurately. While there are a number of interpersonal relationships that might indicate shared financial responsibilities, the task force concluded that, aside from the typical marital relationship, the most easily verifiable relationships are student/parent and domestic partner relationships. The draft policy thus evaluates the verifiable indicia of these relationships to determine whether the aggregation of income is appropriate for replacement housing purposes.

The task force concluded that it was appropriate to aggregate the incomes of unmarried but related roommates because related individuals sharing the same household often share a number of financial obligations including the rent. Moreover, the task force found that if unrelated roommates shared financial assets, such as real property or a bank account, it was appropriate to aggregate their incomes for the same reason, that they often will share financial responsibilities such as the rent.

### *Like-for-Like Replacement*

In public comments, concerns have been raised that the draft policy would allow low income units to be replaced with moderate income units. It is contended that the Mello Act requires that replacement units must be like-for-like.

The Mello Act states that units occupied by low or moderate income persons or families may not be converted or demolished “unless provision has been made for the replacement of those dwelling units with units for persons or families of low or moderate income.” The Mello Act does not expressly require that provision must be made for the replacement of those dwelling units with units for persons and families *of the same income level as the units being converted or demolished*.

The replacement unit requirement of the Mello Act is not intended to provide replacement housing for the existing occupants upon whom the determination is based, but rather, to preserve the existing affordable housing stock. Also, by basing the replacement requirement on income levels of the occupants rather than the rent level charged, the replacement requirement of the Mello Act has the potential to create income-restricted units out of market rate units that happen to be occupied by persons of low or moderate income.

Taking these factors into consideration, the draft policy provides that replacement units be set aside as very low, low, or moderate income rental units based upon comparison of the monthly rent at the commencement of term sheet negotiations for the project to the affordable housing rental rates published annually by the Community Development Commission (“CDC”). Thus, market rate units that require replacement because they are occupied by persons or families of low or moderate income would be designated for replacement as moderate income rental units, and units where the rent matched the moderate, low, or very low income rental housing rates of the CDC, would be designated as moderate, low, or very low income rental units, respectively. We believe this is a reasonable interpretation of the Mello Act, as it fulfills the requirement that units occupied by persons or families of low or moderate income be replaced with income-restricted units.

### **Location of Units**

#### *General Off-Site Provision*

In public comments, concerns have been raised over the draft policy’s provisions regarding the location of the income-restricted replacement units off-site, as on-site is identified as preferable. It is contended that providing such units off-site violates the Mello Act unless it is infeasible to provide the units on-site.

The Mello Act provides that replacement units may be provided on-site or within the Coastal Zone if feasible, and if not feasible, then within the extended Coastal Zone. Accordingly, the Mello Act permits off-site replacement within the Coastal Zone as an option without the need for first determining that on-site replacement is not feasible. The County could only require that all replacement units be provided on-site after making a determination that such placement is feasible in all cases before adoption of the new policy. Given the small number of projects anticipated in the near future, and the limited opportunities for placement of off-site replacement units within the Coastal Zone outside of Marina del Rey, the task force does not believe that conducting a Marina-wide feasibility analysis to impose such a condition is worthwhile.

The draft policy is consistent with the Mello Act regarding providing units on-site versus off-site. Under the draft policy, on-site units will be required, provided it is feasible. If providing on-site units is not feasible, the developer will be required to provide the units off-site. This bifurcated approach derives directly from the Mello Act.

#### *Off-Site Joint Development*

In public comments, it was proposed that the County could assist in identifying a site or sites within the Marina to serve as the location for an affordable housing project that would be built using contributions from Marina lessees. It was indicated that the County could require 10 percent low income units elsewhere within the Marina without significantly reducing lease revenues, even assuming similar land costs and high quality design. This is because off-site units can leverage Low Income Housing Tax Credits and other financing alternatives that may not be available to projects with a large percentage of market rate units.

Public comments were also received objecting to the concept of designating one or more sites in the Marina as locations for all affordable units that are required pursuant to the Mello Act. The basis for the objection is the belief that such a proposal would violate the Mello Act and also raises fair housing concerns, as the proposal would ghettoize and stigmatize the affordable units. We would respond by pointing out that affordable housing developments are not, by definition, low-quality housing. Off-site projects that are 100 percent or substantially affordable can be beautifully designed and can feature amenities tailored to meet resident's needs that may not otherwise be included in a luxury project geared towards affluent professionals or retirees.

The County, as the Marina landowner, is in control of a key aspect of land development cost and has the ability, through rent concessions, to contribute to the feasibility of affordable housing production at a site or sites within the Marina. The statute does not specify the level to which off-site development is assisted or made more feasible by actions taken by the local jurisdiction, so the County has the discretion to specify local provisions. The County may even consider setting a goal or a "premium" for off-site inclusionary units that is different and greater than if the units were feasible to provide on-site, although it is not clear how this may affect the feasibility of off-site development.

## **Rehabilitation**

In public comments, concerns have been raised regarding the draft policy allowing off-site units to be either new construction or rehabilitation or existing units. The basis of the objection is the belief that the Mello Act does not allow for rehabilitation of existing units because rehabilitation does not create net new units, and therefore the County may not allow for rehabilitation of units in its policy. It is also indicated that rehabilitation is “cheaper” than new construction, thereby providing developers with an incentive to build off-site. Information in the County’s Housing Element was provided indicating that new construction may cost up to as much as eight times more than rehabilitation. The main goal of the Mello Act is to preserve, increase, and/or improve the affordable housing stock in the coastal zone. Allowing the rehabilitation of an existing unit, and then income-restricting that unit, furthers that goal. Even if the target unit was previously occupied by a low- or moderate-income person, by rehabilitating and income restricting the unit, the unit not only improves in quality, it is guaranteed to be income-restricted for no less than 30 years. The task force concluded that these improved attributes for the affordable housing unit stock in the Marina are consistent with and further the goals of the Mello Act.

## **Duration of Affordability**

In public comments, concerns have been raised regarding the 30-year covenant in the draft policy which guarantees that the income-restricted units should remain restricted for a longer period, perhaps in perpetuity. We believe the 30-year restriction in the draft policy is reasonable.

The Mello Act does not require affordability covenants and does not require affordability to be maintained for any set period of time. Nonetheless, the draft policy requires applicants to record a covenant guaranteeing that the relevant affordable income and rent requirements for each replacement and inclusionary unit will be observed for at least 30 years. A 30-year term is commonly applied in the affordable housing context and is consistent with conventional financing practices. Moreover, a 30-year term is what government agencies and organizations commonly use for determining long-term affordability. Finally, the density bonus law also requires income-restricted units to be restricted for 30 years (or longer depending on the requirements of the financing program) for purposes of obtaining a density bonus.

## **Housing Tenure**

### *Allowing Rental Units in For-Sale Projects*

In public comments, concerns have been raised regarding the provision in the draft policy that allows an applicant to set aside inclusionary rental units for the low-income component of the project when some or all of the market rate units in the project are being offered for sale. We believe the provision in the draft policy is legally permissible.

The Mello Act is silent as to the type of unit (for-rent or for-sale) that must be provided under the statute. Marina del Rey is almost exclusively a rental market. As the County is the landowner in Marina del Rey, there are no fee title transfers of residential units. Currently, only one development in Marina del Rey is structured with a pre-paid long-term condominium sublease regime which permits residents to "purchase" the sublease for their unit. This development also includes rental units. Since a condominium sublease type of leasing structure is possible in the Marina, the draft policy addresses "ownership" units. The draft policy provides flexibility by allowing developments with condominium subleases to provide the affordable housing component as rental units, as an option. The draft policy does not prohibit a developer from offering condominium subleases as affordable units. Moreover, for a particular project, the County may make findings to support allowing affordable for-rent units in a for-sale market rate project. For example, the County may determine that very low income households may have difficulty qualifying for mortgage financing and that preserving rental opportunities for these individuals is preferable. For this reason we believe the provision in the draft policy on this issue is reasonable.

### **In-Lieu Fees**

In public comments, the Housing Advocates support the provision in the draft policy that does not allow an in-lieu fee option as an alternative to providing the required affordable units either on-site or off-site pursuant to the Mello Act. The County's current policy provides for the payment of specified in-lieu fees as an option to providing affordable units either on-site or off-site. Public comments have also been received by representatives of local developers and the Marina Lessees Association who have requested that the task force reconsider establishing in-lieu fees as an option that would allow the County to collect funds for the construction of affordable housing from Marina developments where on-site and off-site affordable units are infeasible.

The Mello Act does not require local jurisdictions to grant in-lieu fees for the provision of replacement housing units or inclusionary housing units. The Mello Act sets parameters for allowing in-lieu fees for replacement housing units, which exempts applicants from the requirements to provide on-site or off-site units, but only when it is infeasible to do so. The Mello Act is silent on in-lieu fees for inclusionary housing units, which suggests that the in-lieu fees would only apply when the provision of inclusionary housing units is infeasible. Although the in-lieu fee traditionally functions as an *alternative* to providing affordable units, in the context of the Mello Act, the parameters set forth suggest that in-lieu fees, if a local jurisdiction chooses to grant them, can only be applied when it is infeasible to provide on-site or off-site affordable units.

The Mello Act provides authority for local governments to set in-lieu fees based upon the results of a technical study. Implementing an in-lieu fee program, however, places the responsibility for ultimately constructing affordable housing on the County. The decision to not allow an in-lieu fee option in the draft policy is intended to provide a clear requirement that the developer/lessee is responsible for providing the required amounts of affordable housing, encourages the placement of affordable housing on-site, in Marina del Rey, and ensures that the affordable housing is provided within a reasonable time.

### **Financial Impacts of Various Options**

A financial analysis has been prepared to determine the impact of various housing policy scenarios on the potential loss in rent to the County, and potential rent credit to the lessee due to the loss in value from the inclusion of affordable housing on site. The chart below provides a summary of the financial impact to the County based on the various scenarios identified below and applied to the development projects presently being negotiated with the Department of Beaches and Harbors including Neptune Marina, Villa Venetia, Del Rey Shores and EMC Development:

<b>Scenario</b>	<b>Description</b>	<b>Total Revenue Loss</b>	<b>Total Rent Credit</b>
Draft Policy	<ul style="list-style-type: none"> <li>72 replacement units at moderate income.</li> <li>65 inclusionary units at very low income calculated on 5 percent of the Net New Units built (i.e. total units less existing units to be demolished = net new units).</li> </ul>	\$7.3 million	\$32.1 million
A	<ul style="list-style-type: none"> <li>72 replacement units at moderate income.</li> <li>128 inclusionary units at very low income calculated on 10 percent of the Net New Units built (i.e total units less existing units to be demolished = net new units).</li> </ul>	\$10.7 million	\$53.7 million
B	<ul style="list-style-type: none"> <li>72 replacement units "like for like" based on existing unit mix.</li> <li>89 inclusionary units at very low income calculated on 5 percent of the Adjusted Total Units built (i.e. total units less replacement units = adjusted total units).</li> </ul>	\$9.3 million	\$44.4 million
C	<ul style="list-style-type: none"> <li>72 replacement units "like for like" based on existing unit mix.</li> <li>177 inclusionary units at very low income calculated on 10 percent of the Adjusted Total Units (total units less replacement units = adjusted total new units).</li> </ul>	\$15.2 million	\$74.7 million
D	<ul style="list-style-type: none"> <li>72 replacement units "like for like" based on existing unit mix.</li> <li>112 inclusionary units at very low income calculated on 10 percent of the Total Units.</li> </ul>	\$11.1 million	\$53.3 million

The estimated revenue loss reflects a reduction in County rents as compared to an all market rate transaction with no affordable housing units. The total rent credit quantifies the reduction in land value to the developer, as a result of providing affordable housing on site. The replacement housing obligation for each scenario is assumed to be 72 units as moderate, low or very low income units depending on the scenario selected, while the inclusionary housing obligation is based on the percentage calculations identified in the chart. It is important to note that these numbers are estimates and may fluctuate depending on the results of the income surveys required to determine the replacement housing obligation, and County rent concessions ultimately negotiated with the developers' on a case by case basis.

### **Community Outreach/Stakeholder Input**

The task force was strongly urged by both opponents and supporters of the draft policy to complete further outreach efforts to obtain stakeholder input. This includes additional outreach to Marina tenants through workshops. A request was made to add a community resident to the task force since the composition of the task force does not include a resident from the community. The concern by opponents of the draft policy is that resident's views on matters of future growth and affordable housing are not being represented in the drafting of the policy. The task force was established by a Board motion, therefore changes to its composition are within the discretion of the Board. Given the timeframe that the Board has given to the task force to complete its work, it is not possible to make changes to the task force and conduct additional outreach efforts and still meet our current deadline.

Based on the attendance at the September 2006 community forum, and the amount and diversity of comments received, we believe that the comments received to date provide a good representation of the range of views among the community and stakeholder groups. Additional opportunities for public comments will be available during the environmental review period and when your Board considers the environmental document and revised draft policy.

## **CONCLUSION AND RECOMMENDATION**

As housing developments are proposed on different sites within Marina del Rey, they will have different capacities to provide affordable housing units or to utilize public subsidies or incentives, including density bonuses. Therefore, the task force recognizes that providing developers with flexibility in complying with the Mello Act provisions through the County's policy will result, in the long term, in more affordable housing being built than if overly restrictive requirements are imposed.

The Mello Act contains the flexibility to work within reasonable and responsible parameters where there are benefits to both the Marina and the County as a whole. However, this also poses a unique challenge to reconcile the requirements under the Mello Act with other State-mandated programs that are implemented within the



unincorporated area and balance economic, environmental, and social objectives. Although we believe that the task force has provided your Board with a draft policy that is balanced and in compliance with Mello Act requirements, we also have provided you with a range of options that you can consider to fine tune the policy, as you deem appropriate.

The task force recommends that the Board consider the policy options identified in **ATTACHMENT 4**. In order to define the policy as a “project” for the purposes of completing the CEQA review, we would need to incorporate any decisions that you wish to make to fine tune the draft policy through the selection of other options.

DEJ:JSE:SHK:jtm

Attachments:

- Attachment 1: Transcript of Testimony at 9/7/06 Community Meeting
- Attachment 2: Additional Public Comments – Written Correspondence
- Attachment 3: Task Force Response to Comments
- Attachment 4: Mello Act Policy Options Comparison Table

## **ATTACHMENT 1**

Transcript of Testimony  
at the September 7, 2006  
Community Forum in Marina del Rey

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TAPED TRANSCRIPTION OF

8

AFFORDABLE HOUSING TASK FORCE COMMUNITY MEETING

9

SEPTEMBER 7, 2006

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20 ATKINSON-BAKER, INC.  
21 COURT REPORTERS  
22 www.depo.com  
800-288-3376

23 Transcribed by: Vilia Roubinek, Transcriptionist

24 FILE NO: A008033

25

1 MR. SANTOS KREIMANN: I guess maybe we should  
2 talk about cell phones first, right? If you -- I'd  
3 appreciate it, really, if you all would turn your cell  
4 phones off and if you absolutely need to answer it, if  
5 you could just take it outside, that would be -- that  
6 would be great.

7 Another housekeeping issue is that if anyone  
8 needs to use the restrooms, the restrooms are right  
9 through these doors to the left. They're straight  
10 through -- straight through to the right.

11 My name is Santos Kreimann and I work for the  
12 Chief Administrative Office of the County of Los Angeles  
13 and today we're here to discuss the affordable housing  
14 policy, the draft Affordable Housing Policy that the  
15 Board of Supervisors considered, I believe it was in --  
16 sometime in August, I believe. So we're gonna go ahead  
17 and get started.

18 Another item is we would like to make sure that  
19 every single one of you has an opportunity to speak  
20 tonight. We have some speaker cards over here that we  
21 would like for you to fill out so that we can keep track  
22 of everyone and when the comments -- for the comments.  
23 So those are little housekeeping items and we're planning  
24 on going from, I believe, this committee forum is  
25 scheduled from five o'clock to eight o'clock.

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1 that first time around, so we get another crack at it.

2 The members of the task force are each one of  
3 the Department heads that are listed here:

4 The Chief Administrative Office is represented  
5 by Mr. Janson, [phonetic] my boss and myself. I'm the  
6 staff person on the task force.

7 Department of Beaches and Harbors is  
8 represented by Mr. Woznezki [phonetic] and Charlotte  
9 Miyamoto [phonetic].

10 The Community Development Commission is  
11 represented by Mr. Jackson, the Executive Director of the  
12 Community Development Commission and Mr. Blair Babcock.  
13 Office of County Counsel is represented by two  
14 attorneys, Tom Farnen and Larry Heifetz.

15 And the Department of Regional Planning, and of  
16 course, their boss, Mr. Fortner, is a member of the task  
17 force as well. The Department of Regional Planning is  
18 represented by the interim director, Mr. Hartell, by Russ  
19 Frencano who is the planner in charge of the Marina. I  
20 believe that's correct.

21 MALE VOICE FROM STAGE: Marina cases, Marina  
22 cases --

23 MR. KREIMANN: Marina cases, yes.

24 SAME MALE VOICE: Marina liaison.

25 MR. KREIMANN: And Julie Moore. So let's get

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1 This is sort of the agenda that we thought we  
2 would following: the first thing that we're going to do  
3 is my welcome to you all and I appreciate you all being  
4 here. That's a very important issue for the County and  
5 for the community at large. We know that there are  
6 differing views on both sides of the aisle and we want to  
7 make sure that we hear everything that you need or  
8 everything that you feel is important to include it in  
9 the policy, the revised policy. We'll do our best to  
10 take your input and incorporate that in our next Board  
11 letter, or I'm sorry, Board Memo, to the Board of  
12 Supervisors. But we'd like to try to do is put together  
13 some options for the Board to consider based on the  
14 public testimony that we're taking here today.

15 We're going to go ahead and review the draft  
16 policy that has been developed and then we're going to  
17 right into the public input session. And then, of  
18 course, we'll conclude the forum right after that.

19 So let me introduce to you the charge by the  
20 Board of Supervisors to go back and review the existing  
21 policy that was here, that was done in April of 2002, I  
22 believe. And they charged us with reviewing it and  
23 making recommendations to it that would make -- ensure  
24 that we comply with the Mello [phonetic] Act  
25 requirements. There was some concern that we didn't do

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1 right to the presentation. We're going to go ahead and  
2 review the policy that was developed as part of the task  
3 force. There's a few basic requirements that we looked  
4 at when we were developing the draft policy. The basic  
5 requirements for the Mello [phonetic] Act are first, that  
6 converted or demolished residential units that are  
7 occupied by very low- or moderate-income persons or  
8 families must be replaced.

9 The second item is that all new residential  
10 projects must provide inclusionary housing units  
11 affordable to low- or moderate-income persons or families  
12 where feasible.

13 The last item on the chart here is that local  
14 governments can only approve demolition or conversion of  
15 residential structures to commercial uses that are not  
16 coast-dependent if they first find that a residential use  
17 is no longer feasible at that location.

18 So those were the items that the task force was  
19 charged to look at review and developing a revised policy  
20 for the Board's consideration.

21 Now, as we look forward, there was a tremendous  
22 amount of discussion about what our goals were in the  
23 development of the policy. So we came up with four goals  
24 and they're listed here on the board.

25 The first and foremost Board directive was for

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1 whatever policy we developed, we had to comply with the  
 2 Mello [phonetic] Act requirements. That was the first  
 3 directive that we got from the Board. The other was to  
 4 preserve existing affordable housing supplies which we  
 5 call "replacement units" and support the creation of new  
 6 affordable housing units which is termed the  
 7 "inclusionary units" and with all that being said, the  
 8 biggest issue that we had a lot of discussion about is  
 9 how was the County going to balance the Mello [phonetic]  
 10 Act requirement with the County's ability to continue to  
 11 generate revenues that are [inaudible word] benefit  
 12 programs. So that was a major issue that we had a lot of  
 13 discussion on, as well as the other issues, as well.  
 14 [Inaudible audience question]  
 15 Okay, the draft policy -- just in a nutshell --  
 16 we looked at the replacement housing units. We believe  
 17 that, according to the Mellow [phonetic] Act, we needed  
 18 to set aside replacement housing units for low- or  
 19 moderate-income families based on the results of an  
 20 income survey that's administered by the Community  
 21 Development Commission. Inclusionary housing units -- we  
 22 developed a formula that would calculate the affordable  
 23 housing units based on the net new incremental units to  
 24 be constructed with the County goal of five percent very  
 25 low- or ten percent low-income units set aside as

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1 draft policy as it's been proposed for the Board of  
 2 Supervisors. Okay? The other --  
 3 MEMBER OF AUDIENCE: Excuse me --  
 4 MR. KREIMANN: Yes.  
 5 MEMBER OF AUDIENCE: And why does it -- you're  
 6 going to assess the draft policy and all we're going to  
 7 do is talk it out -- your policy and the staff -- and  
 8 we're not going to be able to have input into what  
 9 [inaudible words].  
 10 MR. KREIMANN: No. That's not what I said.  
 11 What I said is the exact opposite, which is I'd like to  
 12 go through the policy, use that as the starting off  
 13 point, the draft policy, and then we'd like to see,  
 14 receive your input on what you all believe needs to be  
 15 included in the new revised policy. So what we're  
 16 looking to do is to develop options for the Board of  
 17 Supervisors to consider as opposed to just seeing one  
 18 policy and saying, voting up or down on that.  
 19 The affordable housing, we believe, a thirty-  
 20 year covenant is appropriate and the one big difference  
 21 between this draft policy and the original draft,  
 22 original policy is that there is no end off fee program  
 23 attached to this one.  
 24 So let's go on to the next slide. We'll talk  
 25 about the income survey.

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1 affordable housing.  
 2 MEMBER OF AUDIENCE: Is that in addition to the  
 3 replacement housing units? Or not?  
 4 MR. KREIMANN: It's -- the inclusionary is an  
 5 addition.  
 6 MEMBER OF AUDIENCE: In addition to --  
 7 MR. KREIMANN: That's correct. And, of course,  
 8 that's all based on a feasibility analysis and we believe  
 9 that a case-by-case basis is the way for -- is the most  
 10 feasible way, or streamlined way to go.  
 11 MEMBER OF AUDIENCE: [Inaudible question]  
 12 MR. KREIMANN: Sure, I'll go through the -- how  
 13 about if I go through the presentation and then I'll go  
 14 back, you know, then I'll ask some questions. I'm not  
 15 the only one that's going to be asking -- answering any  
 16 questions. Any questions that you may have -- we'll be  
 17 more than happy to clarify anything with respect to the  
 18 affordable housing policy that's been developed, the  
 19 draft policy. But I don't want to do, though, is, I  
 20 don't want to engage in one-on-one discussions about the  
 21 merits of any proposals that you all have and the merits  
 22 of the proposals that we have. We're interested in  
 23 receiving your input and discussing what it is that you  
 24 all believe needs to be included in this policy.  
 25 Okay, so we're here to clarify the policy, the

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1 [Inaudible sentence by male voice]  
 2 MR. KREIMANN: It's all right. Just for those  
 3 of you that have walked in, we have some speaker cards  
 4 over here. If you just fill them out and then we'll come  
 5 around the room and pick them up for you all, from you  
 6 all.  
 7 Let's talk about the income survey. The income  
 8 survey is what is used as the tool that's used to  
 9 determine the number of replacement housing units that  
 10 each project is required to construct as part of the  
 11 Mello [phonetic] Act. The income survey is to be  
 12 completed by each family and individual occupant of an  
 13 existing complex. The income information from individual  
 14 occupants named on the lease and their family members or  
 15 domestic partners will be used exclusively to determine  
 16 replacement housing eligibility.  
 17 The Community Development Commission is charged  
 18 with confirming the household income levels and to  
 19 identify the number of [inaudible:... -ments] eligible  
 20 for replacement. The next --  
 21 MEMBER OF AUDIENCE: [Inaudible]  
 22 MR. KREIMANN: It's unaffordable housing, yes,  
 23 you can -- affordable housing, yes. We're not going to  
 24 limit it to seniors, though.  
 25 MEMBER OF AUDIENCE: [Inaudible]

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1 MR. KREIMANN: We won't limit it to seniors.  
2 It's just affordable housing. Come on in. Welcome.  
3 Okay. Now the income survey has the number of  
4 components that needed to be evaluated. As the task  
5 force got together and started discussing these items, we  
6 needed to figure out how to handle certain individuals  
7 that are housed in the complexes. So we did our best and  
8 we've identified certain categories or individuals and  
9 applied that needed to be applied [inaudible word], the  
10 number of replacement housing units required.

11 So the first item was how do we treat  
12 management employees and it was our thought that  
13 management employees are ineligible for replacement  
14 housing. Students claimed on parents' income taxes, the  
15 student is another population that we needed to pay  
16 special attention to and we decided that students claimed  
17 on parents' income taxes or whose parents are guarantors  
18 on the rental lease agreement must include the parental  
19 household income as part of the survey. Any vacant unit  
20 at the time of term sheet [?] negotiations is deemed to  
21 be a market rate unit.

22 The next slide is a continuation of that, of  
23 the special groups. The developer must demonstrate that  
24 any tenant eviction one year prior to commencement of  
25 term sheet negotiation was for cause. As opposed trying

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1 Inclusionary housing -- this -- to get back to  
2 your question, the inclusionary housing [inaudible word]  
3 that posts separately from a [inaudible word] place that  
4 housing obligation. So there are two separate  
5 obligations. Inclusionary housing needs to be dispersed  
6 throughout the rental unit component of the project. It  
7 needs to be sized and designed to be comparable to market  
8 rate units and it's based on the net new incremental  
9 units to be constructed. And what means is that you have  
10 a developer who submits an application to build a five-  
11 hundred unit complex and there is two hundred existing  
12 unit complexes, or two hundred units already existing and  
13 he demolishes the two hundred.

14 The inclusionary housing would be calculated  
15 based off of the three hundred net new incremental units  
16 and the two hundred would be taken care of in terms of  
17 affordable housing based on the income surveys and the  
18 replacement housing obligation.

19 MEMBER OF AUDIENCE: [Inaudible question]

20 MR. KREIMANN: Sure. The inclusionary housing  
21 calculation is based on what we term the "net new  
22 incremental units" and what the net new incremental units  
23 is, is if an application submits an application -- if a  
24 developer submits an application to build a five-hundred  
25 unit complex, and there's two hundred existing units that

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1 to circumvent the Mellon [phonetic] Act requirements.

2 The next is the replacement eligibility for  
3 tenants returning incomplete income surveys. So we  
4 needed a way to evaluate an individual that is occupying  
5 a unit but fails to provide the income information in the  
6 income surveys or just fails to submit an income survey  
7 altogether. And what we've decided is sort of a two-fold  
8 approach. We believe that the best way, best approach  
9 was to look at the information contained in the lessor's  
10 financial records. If the information was two years or  
11 was within two years of the application, we would use  
12 that information as the financial information for that  
13 individual or there would be a test based on the monthly  
14 rental rates, the average monthly rental rates.

15 The next key category was how do we treat  
16 unmarried or unrelated tenants wishing to be treated as  
17 separate individuals. We decided that they must declare  
18 under penalty of perjury that they are number one: they  
19 are not registered domestic partners, neither party  
20 receives employment benefits from the other, they do not  
21 share a bank account and they do not own real property  
22 together. So if one household has two individuals and  
23 they want to be treated separately, they could certainly  
24 submit separate income surveys for each one, but they had  
25 to meet this particular test.

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1 are going to be demolished as part of the development,  
2 then the inclusionary housing is based off, calculated  
3 off the three hundred units, as opposed to the five  
4 hundred units because the two hundred units is being  
5 taken care of in terms of how the replacement housing is  
6 calculated.

7 MEMBER OF AUDIENCE: [Inaudible question]

8 MR. KREIMANN: It's being calculated based off  
9 -- the replacement housing is based off the income  
10 survey. So that --

11 MEMBERS OF AUDIENCE: [Inaudible question]

12 MR. KREIMANN: Well, why don't -- I'll clarify  
13 it for you, but let me just answer your question. Then I  
14 won't from there take any more question.

15 The net new incremental unit is based off the -  
16 - if the developer has five hundred units that he wants  
17 to develop, and there are two hundred units that are  
18 already on the site and are going to be demolished, the  
19 net new incremental is based off the three hundred new  
20 units that are being constructed. Okay, no more  
21 questions. Let me get through --

22 MEMBER OF AUDIENCE: I just have a comment. It  
23 seems to me if you do [inaudible word] on that property  
24 [inaudible word], you'll discover that residential was  
25 not the priority for that property. [Inaudible words]

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1 MR. KREIMANN: Well, I'm not taking any more  
2 questions. So let me just get through the -- let me get  
3 through the presentation and then when you have the  
4 opportunity to come up to the stage, you can ask that  
5 question or you can make a comment on that. So that's  
6 the way we'd like to treat that. Okay?

7 And, of course, I already spoke to the  
8 inclusionary housing that the County goal is to set aside  
9 five percent of the new units for very low-income  
10 households or ten percent for low-income households,  
11 subject to a feasibility analysis.

12 Feasibility analysis: there's a few tests that  
13 we believe needs to be addressed. First question that  
14 needs to be answered is: can a project be successfully  
15 completed within a reasonable period of time, taking into  
16 account economic, environmental, social and technical  
17 factors. That is specific language that is contained in  
18 the Mello [phonetic] Act. The other issue that needs to  
19 be addressed is what impact will density bonuses or other  
20 incentives and potential economic aids such as tax  
21 credits, ARM financing, grants and rents concessions have  
22 on making on-site housing feasible.

23 The final item is what is the return to the  
24 developer. The County is very interested in that and has  
25 an index that is applied to determine whether or not

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1 with priority given to the unincorporated areas of Los  
2 Angeles County. So this has to do with the replacement  
3 housing obligation.

4 Off-site construction of inclusionary housing  
5 is slightly different. The priority order is that it, in  
6 the coastal zone within the unincorporated territory of  
7 Los Angeles, the inclusionary housing -- this is if the  
8 project is deemed infeasible, then the inclusionary  
9 housing must be constructed first: in the coastal zone  
10 within the unincorporated territory of LA County; second:  
11 within the three miles of the coastal zone in the  
12 unincorporated territory of LA County; third: in the  
13 coastal zone within in the incorporated territory of LA  
14 County; and finally, within three miles of the coastal  
15 zone in the incorporated territory of LA County.

16 And so what we wanted to do was make sure that  
17 the County's unincorporated areas were given priority in  
18 terms of construction of the inclusionary housing units.  
19 We believe that that was important because of the State's  
20 insistence now on making sure that we county every,  
21 single affordable housing unit that's constructed in the  
22 unincorporated areas.

23 Nonresidential conversions: proposals to  
24 demolish or convert residential structures for commercial  
25 uses that are not coast-dependent will be evaluated. No

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1 something is feasible in terms of the return to the  
2 developer. So --

3 MEMBER OF AUDIENCE: [Inaudible]

4 MR. KREIMANN: Sure. I believe the second one  
5 also is there and the return of the developer is not  
6 there specifically in terms -- it's an economic factor,  
7 so yes, it is included. The task of the task force was  
8 to develop some way of measuring that and -- in order to  
9 determine whether or not the project is feasible or  
10 infeasible from an economic perspective.

11 So, project infeasibility: the developer has  
12 the burden of proof with respect to project and  
13 feasibility. The Directors of Regional Planning, Beaches  
14 and Harbors, and the Community Development Commission  
15 must jointly concur with the developer's findings of  
16 project infeasibility. If on-site affordable housing is  
17 deemed infeasible, the Mello [phonetic] Act requirements  
18 must be met off-site.

19 So, let's talk a little bit about if the  
20 project is deemed infeasible, where would the off-site  
21 replacement housing be required to be constructed. The  
22 County came up with that replacement housing can be  
23 provided on-site or within the coastal zone if feasible.  
24 If not feasible on-site or within the coastal zone, then  
25 it can be provided within three miles of the coastal zone

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1 project will be approved unless the County determines  
2 that a residential use is no longer feasible at the  
3 proposed location. So, we have to make certain findings  
4 before we can convert from a residential use to a  
5 commercial use.

6 So additional provisions that were included in  
7 the draft policy include that the applicant must submit  
8 an affordable housing plan to the County prior to  
9 issuance of building permits. The applicant shall report  
10 a thirty-year covenant guaranteeing affordable income and  
11 rent requirements. The certificate of occupancy for new  
12 market rate units will be withheld until off-site  
13 affordable housing units are completed and available for  
14 occupancy. Off-site affordable housing units must be  
15 comp --

16 MEMBER OF AUDIENCE: [Inaudible]

17 MR. KREIMANN: Okay. The certificate of  
18 occupancy for new market rate units will be withheld  
19 until off-site affordable housing units are completed and  
20 available for occupancy. So we included that in there so  
21 that we made sure the developer was responsible for  
22 making sure that the affordable housing that's  
23 constructed off-site is completed, is constructed and  
24 completed prior to them receiving their certificate of  
25 occupancy for their new development.

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1 And lastly, the off-site affordable housing  
2 units must be completed no later than three years from  
3 issuance of a building permit for the new development.  
4 Some additional provisions of the policy: the  
5 applicant proposing to develop a project with rental and  
6 ownership units may provide all replacement inclusionary  
7 housing in the rental component of this project. An  
8 applicant proposing to develop a hundred percent  
9 ownership project may provide rental units on-site to  
10 fulfill the replacement inclusionary obligation. The  
11 Community Development Commission will charge an annual  
12 fee per affordable housing unit for monitoring the  
13 affordable housing covenant.  
14 So let's talk a little about how the rest of  
15 the meeting is going to shake out, or at least the one we  
16 have envisioned. We'd like for anyone that would like to  
17 speak to fill out the public speaker card and they'll be  
18 on the table over here. And if you can be kind enough to  
19 just hold them with you and I or someone here will walk  
20 around and pick up the cards from you all.  
21 MEMBER OF AUDIENCE: We already have some.  
22 MR. KREIMANN: We have some, but if you have  
23 not filled one out, go ahead and fill it out, hold it,  
24 and we'll be walking around the room and we'll take them  
25 as they come in. We've allocated three minutes for each

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1 MEMBER OF AUDIENCE: [Inaudible]  
2 MR. KREIMANN: No, no, no. What I said was  
3 that we're going to receive your comments, then the task  
4 force is going to go through your comments. We're going  
5 to develop different options based on your input and then  
6 we'll present a report to the Board of Supervisors with  
7 several options.  
8 MEMBER OF AUDIENCE: [Inaudible]  
9 MR. KREIMANN: The Board will decide on what  
10 needs to be done. Generally, what's going to happen is  
11 once the Board says this is the policy that we like,  
12 these are the components, we would be charged -- my  
13 office, actually, would be charged with developing an  
14 environmental document.  
15 MEMBER OF AUDIENCE: [Inaudible]  
16 MR. KREIMANN: Correct?  
17 MALE VOICE FROM STAGE: I just want to make one  
18 point about the comments. The task force will also be,  
19 of course, accepting any written comments that are the  
20 same as tonight, or different, or whatever. And we'll --  
21 that will be part of the package, too, that we will be  
22 collating and looking through for purposes of reporting  
23 to the Board. So written comments can be received as  
24 well.  
25 MEMBER OF AUDIENCE: [Inaudible]

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1 one of you all to speak tonight on the draft policy and  
2 to give us your views on what you believe needs to be  
3 included. Any comments or input is greatly appreciated.  
4 Like I said before, the members of the task force are  
5 here to clarify any provisions of the draft policy. The  
6 community forum is going to be audiotaped, so I would  
7 appreciate it if you all spoke clearly into the  
8 microphone, say your name, tell me where you live, or say  
9 or name, spell your last name, which would be helpful,  
10 and give us your -- what company you're representing or  
11 if you're representing yourself. And then you can begin  
12 speaking.  
13 Once we receive your input, the plan is to  
14 gather all the comments, collate them, and make a  
15 presentation to the Board of Supervisors to consider  
16 different options that will come out of this particular  
17 forum. Now, the one thing that I would really like to  
18 stress is that I know that there are differing views  
19 about this particular policy, but I would -- I would  
20 really appreciate it if everyone gives the individual  
21 speaking the courtesy of listening, no remarks until  
22 they're finished and then you will have an opportunity to  
23 speak on this particular policy. So if you can just  
24 maintain some decorum, I would greatly appreciate it.  
25 Yes?

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1 MALE VOICE FROM STAGE: I have --  
2 MR. KREIMANN: You're going to have an  
3 opportunity to talk about -- this is your opportunity to  
4 provide the input for the preparation of the Board  
5 reports.  
6 MEMBER OF AUDIENCE: [Inaudible]  
7 MR. KREIMANN: Hold on, let me finish, and then  
8 I'll get to you. So, we're going to get, receive your  
9 comments which we as staff are going to prepare a Board  
10 report based on your input and present it to the Board.  
11 The Board -- you always have the opportunity to go before  
12 the Board of Supervisors at that point in time and talk  
13 about the revised, revised draft policy.  
14 FEMALE MEMBER OF AUDIENCE: [Inaudible at  
15 first, then became louder:] ...two weeks -- so many...  
16 and there's so many people in this community... and they  
17 haven't got the option... to help people understand  
18 basically the layout of your policy... and clarified the  
19 difference in your policies... explain it out in simple  
20 terms and... fine with it. We're not in a big rush.  
21 MR. KREIMANN: Understood. We're going to have  
22 speaker time.  
23 DIFFERENT FEMALE MEMBER OF AUDIENCE: Listen...  
24 MR. KREIMANN: We're going to have speaker  
25 time.

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1 SAME FEMALE MEMBER OF AUDIENCE: Listen, but  
 2 you have to hear this now. [Inaudible] ... as much as I  
 3 can. But we didn't have any time to do this, to give  
 4 input. We had very little time to do this. Second of  
 5 all, nobody I spoke to knew there was such a task force.  
 6 Any of you guys here... [inaudible and other voices].  
 7 MR. KREIMANN: Excuse me.  
 8 SAME FEMALE MEMBER OF AUDIENCE: And the third  
 9 thing, excuse me, you can't stop me now. The third thing  
 10 that [inaudible] here, is that there are vast numbers of  
 11 people who are going to lose their apartment and nobody  
 12 knows there's such a task force and [inaudible]. You  
 13 need to give the community the time to notice. You need  
 14 to give the community the kind of understanding that they  
 15 can understand. Not lawyer flim-flam. You need to come  
 16 into the community and you need to pass [inaudible].  
 17 MALE VOICE OF AUDIENCE: Hear, hear.  
 18 [Applause]  
 19 MR. KREIMANN: Can I -- let me just answer.  
 20 FEMALE MEMBER OF AUDIENCE: [Inaudible]  
 21 MR. KREIMANN: I'll get to you -- what I would  
 22 really like to do is get into the public input section.  
 23 I think that's very important. What we're here to do is  
 24 to collect as much information as we possibly can from  
 25 the individuals that are interested. Now, we have, I

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1 FEMALE MEMBER OF AUDIENCE: There is no time  
 2 for it.  
 3 ANOTHER FEMALE MEMBER OF AUDIENCE: [Inaudible]  
 4 ...yesterday.  
 5 MORE FEMALE VOICES: [Talking over each other.]  
 6 ...we want to hear from the supervisors... you to tell  
 7 us... we want you to go into the community and tell them  
 8 what your f\*\* plan is.  
 9 MR. KREIMANN: Okay, let's -- thank you for  
 10 your comment and I think what we'd like to do, what we'd  
 11 like to do is we'd like to move on, get the input from  
 12 the various stakeholders, the community, and I believe  
 13 that would be the best use of our time at this particular  
 14 point in time. Now, as a task force, what I can commit  
 15 to you is that we will thoughtfully take into  
 16 consideration everything that's being said today. It  
 17 will be reflected to a large extent in the report that's  
 18 going to the Board of Supervisors. Now we're charged --  
 19 you need to appreciate our side. You know, we're the  
 20 staff people to the Board of Supervisors and we're trying  
 21 to develop a policy that not everyone is going to like,  
 22 okay. Because there's competing interests in this  
 23 particular room and so --  
 24 FEMALE MEMBER OF AUDIENCE: [Inaudible]  
 25 MR. KREIMANN: One moment. There's competing

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1 believe, provided notice to the community and this is  
 2 reflective of the amount of individuals that are in this  
 3 room. Now --  
 4 FEMALE MEMBER OF AUDIENCE: No, it's not.  
 5 MR. KREIMANN: Hold on, hold on.  
 6 FEMALE MEMBER OF AUDIENCE: No, it's not.  
 7 MR. KREIMANN: Okay, well, we have a lot of  
 8 people in the room that have a lot of ideas and that -- I.  
 9 -- we would like to hear them as the task force. We're  
 10 charged with preparing a report for the Board of  
 11 Supervisors. We appreciate the public's input into this  
 12 process. We're going to do our best to reflect that in  
 13 our report. We definitely have deadlines that we need to  
 14 meet as the task force, so we -- we do have a deadline.  
 15 So, and I'm charged with making sure that we meet those  
 16 particular deadlines.  
 17 FEMALE MEMBER OF AUDIENCE: We need to have  
 18 more public input [inaudible] time for public input.  
 19 This is a sneak attack. This is a sneak attack. You all  
 20 called this meeting without letting the people know.  
 21 They need to know to go [inaudible] so they can find out  
 22 you exist.  
 23 MR. KREIMANN: As I mentioned, the task force  
 24 would welcome written comments as well as the testimony  
 25 tonight.

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1 interests in this room and we have to balance those  
 2 things. And I think that the draft policy was a good  
 3 start for the debate and for the discussion. Like I  
 4 heard once, there can be no second guessing until there's  
 5 a first guess, and that's what we've done.  
 6 FEMALE MEMBER OF AUDIENCE: [Inaudible]  
 7 MR. KREIMANN: So, let's go ahead and start the  
 8 public input. There was, I'm sorry, there was one other  
 9 comment. You had your hand up.  
 10 MALE MEMBER OF AUDIENCE: [Inaudible] ...I  
 11 didn't see any information about who to address the  
 12 letters to or [inaudible] ...you know, any information  
 13 that needs to be on there to get it...  
 14 MR. KREIMANN: I'll tell you what I'll do -- is  
 15 before the task force is over, I'm going to go ahead and  
 16 listen. I have the computer here and what I will do is I  
 17 will write -- any written correspondence that you need,  
 18 needs to come to my attention. So I will give you all my  
 19 phone number, I'll give you my address. I would  
 20 appreciate written comments. Written comments would be  
 21 my preference only because I don't want to be accused of  
 22 having a conversation with somebody and then coming back  
 23 to me and saying you omitted something that was important  
 24 to me. So, if you could do me a favor: provide me the  
 25 written comments. We'll collate them. The comments will

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1 be collated and then presented to the Board of  
2 Supervisors for consideration.  
3 FEMALE MEMBER OF AUDIENCE: [Inaudible]  
4 MR. KREIMANN: Sure. My name is Santos  
5 S-A-N-T-O-S Kreimann, and that's K-R-E-I-M-A-N-N and I'm  
6 with the Chief Administrative Office, 754 Hall of  
7 Administration, 500 West Temple Street, Los Angeles,  
8 90012 and let me give you my email address. It's  
9 skreimann@cao.lacounty.gov (S-K-R-E-I-M-A-N-N at C-A-O  
10 at). Last question, then we're going to go to the public  
11 section.

12 MALE MEMBER OF AUDIENCE: [Inaudible]

13 MR. KREIMANN: Two part.

14 MALE MEMBER OF AUDIENCE: [Inaudible] ... can  
15 you give a [inaudible] definition of very low-income...

16 MR. KREIMANN: Yes, let me tell you what our  
17 deadline is. I have -- and these are all internal  
18 deadlines. They're not, you know, anything that the  
19 Board of Supervisors have given us. I believe, actually,  
20 the Board directive said we had ninety days from  
21 August 1st. So we'd like to prepare the revised Board  
22 report within that ninety-day time frame.

23 FEMALE MEMBER OF AUDIENCE: You mean your work  
24 started in [inaudible].

25 MR. KREIMANN: I'm not sure about that. We're

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1 have here. Because we do have a limited amount of time  
2 today. Okay. No more questions, let's just get into the  
3 public session and if you'd like, you can come up and use  
4 your three minutes to talk about whatever it is that you  
5 want to talk about. Okay? Does anybody have any --  
6 MR. [redacted] [from the stage]: Santos, just let  
7 me add one more thing. When the report of the task force  
8 is ready to go to the Board of Supervisors, we will  
9 ensure it is on the Department's website at least two  
10 weeks before the Board considers it in public session.  
11 We will advertise its availability in The Argonaut so  
12 that members of the community here are aware of it.  
13 We'll also announce it at the Design Control Board  
14 meetings, Small Craft Harbor Commission meetings, and our  
15 Beach Commission meetings to get as much as dissemination  
16 of that information as we can.

17 FEMALE MEMBER OF AUDIENCE: [Inaudible] ...  
18 middle of the thing... nobody knew about it? [Inaudible]

19 MR. WOZNEZKI: If you would like, I'll tell you  
20 what. If you would like, you could send to Santos or you  
21 can send to me an email address or a post office box, so  
22 that we can send you the information on when the Board  
23 report will be available.

24 FEMALE MEMBER OF AUDIENCE: [Inaudible]

25 MR. WOZNEZKI: No, I said -- ma'am, ma'am, for

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1 going to have to discuss that as a task force. I cannot  
2 commit to that.

3 FEMALE MEMBER OF AUDIENCE: [Inaudible] ... a  
4 little better so that people in the community know that  
5 you exist and that they should write letters?

6 MR. KREIMANN: Yeah.

7 FEMALE MEMBER OF AUDIENCE: [Inaudible]

8 MR. KREIMANN: Hold on. Okay, well first of  
9 all, let me just -- let me just say this. This

10 particular meeting was publicized. It was publicized.

11 The draft policy was on the Department of Beaches and  
12 Harbors' web page. We have handouts.

13 FEMALE MEMBER OF AUDIENCE: [Inaudible]

14 MR. KREIMANN: But it is there. I mean, you  
15 can't say that -- okay. Listen, I'm not going to -- I  
16 don't want to get into a debate about, you know, what we  
17 did wrong. You know, what we could have done better.  
18 You know, we can all do better. There's no question  
19 about it.

20 FEMALE MEMBER OF AUDIENCE: Okay, good.

21 MR. KREIMANN: So, what I'd like to do is I'd  
22 like to move forward into the public session. If you all  
23 would be courteous enough to allow the speakers to speak,  
24 give the input that we are so desperately looking for, I  
25 think that would serve best in terms of our time that we

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1 anyone in the community, since you are talking to people  
2 in the community, spread the word that they can get on a  
3 mailing list and I'll be happy to get them the  
4 information.

5 [Repeated interruptions by audience  
6 member]

7 Ma'am, that's what we're going to do through our public  
8 forum at the various commission meetings and The  
9 Argonaut.

10 [Audience members speaking over]

11 MR. KREIMANN: This is, hopefully, this is the  
12 last we heard. We've heard your concern about the lack  
13 of notice for this particular meeting. We'll take that  
14 into consideration when we -- the revised policy does  
15 come out, we will notice it the way Mr. Woznezki  
16 mentioned. And the other thing is, is that anybody that  
17 has a speaker card, will be sent one directly to their  
18 home. So make sure you have your address on there. We  
19 try very hard to make sure that the community knows that  
20 these meetings are happening. And, you know, regardless  
21 of what you think about my commitment or, you know, or  
22 what errors I made, that's okay. I mean, that's what I'm  
23 here for. And that's what I'm asking for. All I'm  
24 asking for is a chance to let me fix it and then we'll do  
25 our best when we recirculate the revised report to the

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1 Board. And then, let's leave it at that, let's move  
2 forward. Everybody okay with moving forward?  
3 AUDIENCE MEMBERS: Yes.  
4 MR. KREIMANN: Okay, let's move forward. One  
5 last -- does anybody have anything else to say? No?  
6 Okay. So what I'm going to do is I'm going to move the  
7 microphone over here. I have a stack of cards here and  
8 if Jean [phonetic], can you do me a favor, can you just  
9 kind of walk around and collect the rest of the speaker  
10 cards? That'd be great. What we'd like to do is make  
11 sure that -- we'd like to take all of your statements,  
12 all of your concerns. What we want to try to avoid is a  
13 debate, actually, about what, you know, our new policy is  
14 as opposed to what you think it is. You can certainly  
15 tell us what you think about our policy. That's fine.  
16 But what I don't want is to digress and, you know, have a  
17 lot of -- you didn't think about this, or you didn't  
18 think about that, which is fine. We'll do that. But  
19 we're not going to have a whole lot of discussion because  
20 we have to get through all of the speakers tonight.  
21 Okay?  
22 MALE SPEAKER FROM STAGE: Do you want to turn  
23 that off?  
24 MR. KREIMANN: Okay. Like I said, we went  
25 ahead and allocated three minutes to each speaker. I

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1 County in general seems to be having a problem with this,  
2 with responses. And noticing is not outreach, not the  
3 same thing. Right?  
4 So, what you have in here is a room full of  
5 committed, dedicated people who keep in touch about  
6 issues like this. But what you don't have is the renters  
7 who is going to be affected by this because they didn't  
8 get the word, okay? The people who are here because  
9 they've gone out of their way because they care about  
10 this issue and they let each other know what's going on.  
11 That's not the usual situation.  
12 [Applause]  
13 One of the things that I'd like to bring up is  
14 that this seems to be part of a larger plan for what's  
15 going on in the Marina. We've had the Marina Freeway  
16 extension; we've got the Admiralty Way widening; we hear  
17 all, you know, these rumblings about all these plans for  
18 increased density and so forth and so on. And replacing  
19 some of the recreational facilities and space with  
20 additional housing because that's an income generator for  
21 the County.  
22 I think that either there should be some effort  
23 to present what's going on as part of that larger plan or  
24 ask is there a project here, a large project without a  
25 plan. And I think it's really important to address that

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1 will be the official timer. So, and I will prod you when  
2 you have fifteen seconds left in your presentation.  
3 Okay, so the other -- one last thing is we're going to go  
4 ahead and we have the revised policy that was issued to  
5 the Board of Supervisors here, so if anybody needs them,  
6 we're going to go ahead and pass them out so that you can  
7 review them. Again, that policy is on the Department of  
8 Beaches and Harbors web page if you all need to review it  
9 online. Okay?  
10 And then, one last item is that just to make  
11 sure that we're all clear that we're going to make sure  
12 that we allow this individual to get the full benefit of  
13 their three minutes, and I just would like to make sure  
14 that everyone allows them to speak so they can be heard.  
15 And we'll move on from there.  
16 Let's see, the first speaker is Mr. David Ewing  
17 with the Venice Community Coalition.  
18 MR. DAVID EWING: Hi, my name is David Ewing.  
19 I am a member of the Venice Community Coalition but I am  
20 here on my own behalf. We did not get notice of this and  
21 I'm sorry this is -- I live at 1234 Preston Way in  
22 Venice. I'm sorry this started out so acrimoniously. It  
23 is a problem, though, that there has not been outreach.  
24 I am signed up at previous meetings for mailings on other  
25 related subjects, have not gotten any. So I think the

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1 and to address that to the public because they're already  
2 talking about it.  
3 [End of Side A, Tape 1]  
4 [Start of Side B]  
5 MR. DAVID EWING: [Continuing] And so I think  
6 that needs to be dealt with head on.  
7 As far as the subject at hand, one thing that  
8 I've noticed is that there doesn't seem to be any  
9 discussion of displacement. That's a separate question  
10 from replacement housing. All the people in places that  
11 are going to be torn down have to go somewhere.  
12 FEMALE MEMBER OF AUDIENCE: Exactly.  
13 MR. DAVID EWING: And that means, that means  
14 transients, it means additional burdens on public  
15 services, and it means lives disrupted. So, I think it  
16 is important for you to deal with that question of  
17 displacement. It's a growing question of -- with infill  
18 [?] development all over the State, particularly in the  
19 City of Los Angeles and now here in the County. I think  
20 it's also -- it's very important that whatever you're --  
21 whatever you're -- however you fulfill your Mello  
22 [phonetic] Act requirement for affordable housing, that  
23 there needs to be a solid base number that is not  
24 dependent on how many affordable units there are now. In  
25 other words, instead of saying five percent or ten

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1 percent because they are -- because we figured there are  
2 already a certain number of people there who are going to  
3 get replacement housing, you need to have a commitment to  
4 the real numbers, the ten and twenty percent which the  
5 Mello,[phonetic] Act requires. And whatever you do with  
6 replacement or whatever you call replacement or call  
7 inclusionary or whatever else, you've got to make sure  
8 that you meet those numbers, because I can -- you can -

9 MR. KREIMANN: Fifteen seconds --

10 MR. DAVID EWING: Huh?

11 MR. KREIMANN: Fifteen seconds.

12 MR. DAVID EWING: Oh, okay. I'm also wondering  
13 what are the penalties if the off-site housing is not  
14 completed in three years. It's nice to say, that there's  
15 a rule saying they have to, but, you know, what's the  
16 stick if those aren't provided?

17 And I also think that, depending on lessors to  
18 provide financial information on lessees is a real  
19 invitation to abuse. That's the kind of thing that gets  
20 abused all the time. So --

21 MR. KREIMANN: Thank you, Mr. Ewing.

22 [Applause]

23 MR. KREIMANN: Our next speaker is Helen  
24 Garrit. [phonetic]

25 MS. HELEN GARRIT [phonetic]: See, I told you

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1 housing added to replacement housing and come up with a  
2 number. They're separate. Inclusionary housing means  
3 you don't reduce the number of apartments in the Marina,  
4 okay. That's replacement housing. Inclusionary housing  
5 means that you're making more affordable housing to take  
6 care of the terrific housing crisis. And don't try and  
7 play off the people who are sick against the people who  
8 are unhoused. The County is responsible for both and  
9 they can't take it out of the Marina. We have people  
10 here who need to live here in affordable housing and we  
11 want them to stay in affordable housing. And I don't  
12 want to see any sick people living in apartments and any  
13 healthy people living on the street. That's sick  
14 thinking. And we won't have it.

15 MR. KREIMANN: Fifteen seconds, Ms. Garrit.

16 [phonetic]

17 MS. HELEN GARRIT [phonetic]: Well, finally,  
18 there's going to be two thousand new apartments in the  
19 Marina. We want twenty percent of them to be low-income,  
20 affordable housing and we do not want you to start  
21 putting in moderate-income apartments for people who earn  
22 eighty thousand dollars a year. You're going to  
23 subsidize those people? They can rent a house any damn  
24 place they want. We want low- and very-low income. We  
25 want it in the Marina, on-site, right now. And when you

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1 guys you're going to [inaudible]. So, you're gonna hear  
2 from me. You know, after our victory at the Capri  
3 Apartment where we got ten percent low-income, people  
4 assumed it was ten percent. It's not ten percent  
5 everywhere. We want twenty percent. We want all of  
6 those houses to be twenty percent. And there's more.  
7 There's a better reason why we need twenty percent.  
8 There's a terrible housing shortage in this County.  
9 You're going to evict hundreds and hundreds and more  
10 hundreds of people from their homes in this County from  
11 the Marina. Where're they going to go? There's three  
12 percent available housing. You're making people  
13 homeless. You, you, you, you're making people homeless  
14 and you don't give a darn.

15 Now, about your crummy plan. I'm a person  
16 who's sick. I got at least four major illnesses. I may  
17 very well need someone to take care of me and I have to  
18 pay them. Because, God knows, nobody is going to pay  
19 them for me. So when I have someone come in and take  
20 care of me, they have to live in my house. Are you going  
21 to evict me because I have asthma and a heart condition  
22 and irritable bowel syndrome? Are you going to evict me  
23 when I can't walk? That's a lousy clause. It's a very  
24 bad clause.

25 To begin with, you can't have inclusionary

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1 do replacement housing, we want it one-for-one. If it's  
2 a low-income unit, we want low-income units replaced. We  
3 don't want a replacement moderate-income for people who  
4 earn eighty thousand dollars a year.

5 MR. KREIMANN: Thank you, Ms. Garrit.

6 [phonetic]

7 [Applause]

8 MR. KREIMANN: Okay. Thank you, Ms. Garrit.

9 [phonetic]

10 Our next speaker, Mansour Rajimi? [phonetic]

11 MR. MANSOUR RAJIMI: [phonetic] Yes -- the

12 problem is that [inaudible].

13 MR. KREIMANN: So you don't -- so you don't  
14 want to speak.

15 MR. MANSOUR RAJIMI: [phonetic] No [inaudible]  
16 I'll write a letter.

17 MR. KREIMANN: You'll write a letter. Okay,  
18 look forward to reading it. Our next speaker is Mr.  
19 Levine.

20 MR. LEVINE: Good evening, task force members.  
21 My name is David Levine. I will be addressing you this  
22 evening as the current president of the Marina del Rey  
23 Lessees' Association and a representative of the  
24 ownership of Del Rey Shores Apartments.

25 Your task force is to be congratulated for

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1 formulating a draft affordable housing policy for Marina  
2 del Rey which isn't always compliant with the Mello  
3 [phonetic] Act, yet which provides the County of Los  
4 Angeles and its lessees in Marina del Rey a flexible  
5 framework within which diverse projects can achieve such  
6 compliance. Our recent experience with a myriad of Mello  
7 [phonetic] Act compliance issues affecting the  
8 redevelopment of Del Rey Shores has shown us that the  
9 Mello [phonetic] Act is careful to give local  
10 jurisdictions wide discretion in complying with  
11 affordable housing requirements. As a result, no two  
12 jurisdictions in California comply with the Act in the  
13 same way. It is important to emphasize that the Mello  
14 [phonetic] Act does not prescribe only one means to  
15 comply with the Act and yet multiple, unique projects can  
16 differ in many critical elements and still all be  
17 consistent with the Mello [phonetic] Act.

18 This is particularly important with regards to  
19 our articulation with an affordable housing policy in  
20 Marina del Rey which is owned by the County of Los  
21 Angeles. Marina del Rey is the largest income-producing  
22 asset owned by the people of the County of Los Angeles,  
23 all thirteen million of them. While some existing Marina  
24 tenants may wish to keep their rents at relatively low  
25 levels, there are many hundreds of thousands of other

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1 Marina will not take place.

2 Meanwhile the Marina's aging apartment stock  
3 will continue to deteriorate without the addition of  
4 badly needed market rate apartments or the contribution  
5 of affordable housing units. It is therefore incumbent  
6 upon all parties within the County family and within the  
7 Marina del Rey community to bear in mind the development  
8 in the Marina must strike a sensitive balance between  
9 often competing interests and values. The social good of  
10 providing affordable housing must be weighed against the  
11 social cost of subsidizing affordable housing. The  
12 disruption new construction causes must be weighed  
13 against the improved quality of life the community will  
14 enjoy from renovated and new residential and commercial  
15 developments in the neighborhood.

16 The Board of Supervisors has the right, indeed,  
17 the responsibility to frame the affordable housing policy  
18 in this larger context.

19 I have some more which I will submit to you in  
20 writing. Let me just conclude with this.

21 We live in a less than perfect world. Perhaps  
22 none of us will or can be happy with each and every  
23 provision of this policy. But we all have a vested  
24 interest in making the policy work in increasing the  
25 total housing stock, in providing more affordable

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1 County residents who rely on vital County social  
2 services, who will benefit from the substantial County  
3 revenue that will be generated by redevelopment of the  
4 Marina's aging apartment complexes.

5 In fact, over fifty percent of the rent  
6 generated by the leaseholds by the Marina for the County  
7 is transferred to the County's Department of Health  
8 Services. So the County has a special, social interest  
9 in generating increased revenue from the Marina. It is  
10 simply a fact of life that for every two dollars in rent  
11 forgone by the County to subsidize individual, affordable  
12 units in the Marina, there will be over one dollar of  
13 lost revenue denied to support health services for  
14 millions of County residents from Long Beach to  
15 Lancaster, from Mar Vista to Monrovia.

16 Moreover, the housing shortage in Los Angeles  
17 County extends above and beyond the availability of units  
18 to low-income individuals and families to all rental  
19 units available at many different levels of  
20 affordability. Therefore, the affordable housing policy  
21 for Marina del Rey must provide the County of Los Angeles  
22 and its lessees with the flexibility to stimulate the  
23 construction of market rate units as well as the  
24 provision of affordable units. Unless investors are  
25 assured of market rate returns, redevelopment of the

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1 housing, in keeping redevelopment projects viable, in  
2 realizing the redevelopment envisioned in the Coastal  
3 Commission Certified Local Coastal Program, and in  
4 generating much needed support for a range of vital  
5 County services. We believe the draft achieves that  
6 balance. Thank you.

7 MR. KREIMANN: Thank you. Can I --

8 FEMALE MEMBER OF AUDIENCE: [Inaudible]

9 MR. KREIMANN: Mr. Levine, if you can just give  
10 me the written -- to Mr. Frencano [phonetic] there, I'd  
11 appreciate it.

12 Okay, our next speaker is Mr. Ben Beach.

13 [Applause]

14 MR. BEN BEACH: Would somebody raise this?

15 MR. KREIMANN: Let me know when you're ready.

16 MR. BEN BEACH: Okay, thank you.

17 Good afternoon, good evening, task force  
18 members. My name is Ben Beach, Family Legal Aid  
19 Foundation of Los Angeles. There's been, as has been  
20 noted, there's been substantial amount of discussion  
21 about this policy and we've participated in some of that  
22 discussion. So, I know that some of you got the benefit  
23 of our written submissions. And I'd just like to make a  
24 couple of points if I could this evening.

25 The first is, as I think it's fairly widely

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1 acknowledged, the County is in the midst of an affordable  
2 housing crisis. In that respect, the Marina del Rey  
3 territory is quite unique. It's unique in that it  
4 prevents -- it presents both an opportunity and a  
5 responsibility to address the crisis. It presents an  
6 opportunity in the sense that it's county-owned land.  
7 It's land that the County is in a position to make a  
8 policy decision about how to use. And it presents a  
9 responsibility on the County's part in the sense that the  
10 Mello [phonetic] Act requires the County to deal with the  
11 affordable housing issues in the Marina.

12 Now, there's some debate over exactly what the  
13 nature of the County's responsibility is and I'm going to  
14 speak specifically to the inclusionary issue. The State  
15 Mello [phonetic] Act said, we believe, we stand for --  
16 let me say that again. We stand for the proposition that  
17 the State Mello [phonetic] Act, that the statute that  
18 says: if it's feasible to build something, you have to  
19 build it; means if it's feasible to build something, you  
20 have to build it.

21 The County's positions thus far in this debate  
22 has been: if it's feasible to build something, if the  
23 statute says it's feasible to build something, you might  
24 have to build it. If you do have to build it, we're  
25 going to give you an opportunity to take an automatic

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1 developments.

2 [Applause]

3 So, in some -- in the one place in the County  
4 where we have both an opportunity and a responsibility to  
5 address the dire affordable housing crisis that presently  
6 faces us, this group has thus far has, we believe, taken  
7 a position that's fallen far short of what's feasible in  
8 terms of inclusionary housing units and certainly far  
9 short of what's needed. Thank you very much.

10 [Applause]

11 MR. KREIMANN: Dale Goldsmith.

12 MR. DALE GOLDSMITH: Good evening, honorable  
13 task force members. My name is Dale Goldsmith. I'm a  
14 partner with the law firm of Armburster [phonetic] and  
15 Goldsmith, representing Legacy Partners which hopes to  
16 redevelop the Neptune Marina parcel in the Marina.

17 As a preliminary matter, I'd like to stress  
18 Legacy Partners' commitment to fully comply with the  
19 Mello [phonetic] Act in connection with its redevelopment  
20 of the Neptune Apartments. As I will describe in a  
21 moment, we believe that the draft affordable housing  
22 policy will allow Legacy to achieve this important goal.  
23 However, before I address the draft policy, it's  
24 important to place the unique nature of Marina del Rey in  
25 context.

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1 reduction in what you actually do have to build based on  
2 a density bonus or based on pre-existing housing.

3 We think we have the better reading of the  
4 statute when those two things are put side-by-side. But  
5 let's pretend that in fact the County's position that the  
6 inclusionary requirement from a legal standpoint is wide  
7 open, that this is a -- we're just, you know -- it's a  
8 blank canvas. You can strike whatever policy -- you can  
9 set out on whatever policy decision you want in the  
10 Marina.

11 The policy decision that's been put forth thus  
12 far is, frankly, about as weak a position as this group  
13 could take in terms of insuring that there is an adequate  
14 inclusionary provision for the reasons that I've just  
15 said. It's an extremely low inclusionary obligation  
16 because developers, I think it's fair to say, are likely  
17 to opt for the five percent very low, and then they can  
18 come back around and say, well we have the further  
19 reduction based on the density bonus, and by the way, we  
20 have a further reduction based on the fact that we had  
21 pre-existing housing on this site.

22 Let's compare that just with a few steps down  
23 the road in Venice where developers are, in fact,  
24 complying with a ten percent very low or twenty percent  
25 low requirement and including affordable housing in their

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1 The Marina is owned and operated by Los Angeles  
2 County for the enjoyment and benefit of all County  
3 residents and it generates substantial general fund  
4 revenue that is used, among other things, to fund County  
5 Health and Social Services. This fiscal year alone, more  
6 than fifty percent of the Marina's ground rent proceeds  
7 will be transferred to the County Department of Health  
8 Services. Providing affordable housing in the Marina  
9 will necessarily require a reduction in ground rents. We  
10 should not ignore the fact that the more revenue that is  
11 used to subsidize affordable housing in the Marina, the  
12 less revenue there will be available to support other  
13 vital countywide services.

14 I'd also like to dispel the notion that the  
15 County has done nothing with respect to affordable  
16 housing, including the recently-approved Shores  
17 [phonetic] Project which RPC acted on a couple of months  
18 back. There are a hundred and seventy-nine approved,  
19 affordable units that will come online hopefully in the  
20 next couple years. When this policy is implemented, the  
21 draft policy, there will be many more affordable units  
22 constructed as aging properties are redeveloped.

23 With these broader social considerations in  
24 mind, the method by which the County complies with the  
25 Mello [phonetic] Act should be balanced with

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1 clearly-defined public policy objectives.  
 2 We think that the appropriate objective is to  
 3 facilitate the production of affordable housing the  
 4 coastal zone or if that is infeasible, within three miles  
 5 beyond without jeopardizing the County's ability to  
 6 generate funding for other countywide benefit programs.  
 7 In speaking of the draft policy it is critical  
 8 that any adopted affordable housing policy for the Marina  
 9 provide developers with sufficient flexibility in  
 10 complying with the Mello [phonetic] Act requirements.  
 11 Otherwise, developers will likely be unable to redevelop  
 12 their properties. Meanwhile, the Marina's aging  
 13 apartment stock will continue to deteriorate without  
 14 contributing a single affordable unit.  
 15 We commend the task force for including in the  
 16 draft policy this sort of flexibility.  
 17 MR. KREIMANN: Fifteen seconds.  
 18 MR. DALE GOLDSMITH: We would appreciate  
 19 though, however, that if the task force could clarify one  
 20 aspect of the current draft. The Executive Summary says  
 21 that any rent concession by the County will relate only  
 22 to inclusionary units, because inclusionary units are  
 23 required only if feasible and the replacement units are  
 24 critical for the determination of feasibility. We  
 25 believe that the replacement units must necessarily be

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1 [Inaudible response.]  
 2 MR. KREIMANN: How do you pronounce your first  
 3 name?  
 4 MS. GITANE VALENTINE: "Gitane." [phonetic]  
 5 MS. KREIMANN: Gitane. Okay.  
 6 MS. GITANE VALENTINE: My name is Gitane  
 7 [phonetic] Valentine. I'm a long-time Venice resident.  
 8 And I'm a member of Power and Venice Community Housing.  
 9 I live in Venice. In fact, Venice could walk to Marina  
 10 del Rey and Marina del Rey could walk to Venice. For the  
 11 counties who have ten percent low and five percent very  
 12 low, it should be like the City: twenty percent low and  
 13 ten percent very low. I think everybody's heard about  
 14 Lincoln Place. There are thirty-seven people left. One,  
 15 today, I understand went to the hospital. I've gotten to  
 16 know the people at Lincoln Place. I know a lot of people  
 17 that this will affect and the City and the County should  
 18 be the same. Because — and another thing of my concern  
 19 is the seniors and the ones specially at Lincoln Place  
 20 that are being evicted. Those are seniors and disabled  
 21 people and for one to have to go to the hospital today on  
 22 account of this.  
 23 You should consider and have one Mello  
 24 [phonetic] Act and it should be twenty percent or ten  
 25 percent, just like the City is. Thank you.

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1 considered in determining the amount of any such rent  
 2 concessions. Thank you for this consideration.  
 3 MR. KREIMANN: Thank you, Mr. Goldsmith.  
 4 [Inaudible from female audience member]  
 5 MR. KREIMANN: Okay. Our next speaker is  
 6 Liliana Hernandez.  
 7 [Applause]  
 8 MS. LILIANA HERNANDEZ: Good evening. My name  
 9 is Liliana.  
 10 MR. KREIMANN: Could you move the mike down?  
 11 So, speak right into the mike because we're trying to  
 12 record this. Thank you.  
 13 MS. LILIANA HERNANDEZ: My name is Liliana and  
 14 I'm from Power. I live in the City of Venice and because  
 15 Marina is right next door to me, this policy of five  
 16 percent very low- or ten percent low-income units is not  
 17 enough. So this concerns me because this will come to  
 18 Venice next. So this needs to be more of like a twenty  
 19 percent or at least double. And that's all I have to  
 20 say. Thank you.  
 21 MR. KREIMANN: Thank you.  
 22 [Applause]  
 23 MR. KREIMANN: Our next speaker is, and forgive  
 24 me, but I believe it's Shatwan [phonetic pronunciation by  
 25 Mr. Kreimann] Valentine? How did I do with that name?

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1 [Applause]  
 2 MR. KREIMANN: Thank you, Ms. Valentine.  
 3 Our next speaker is Lauren Wolpert [phonetic].  
 4 Lauren? Welcome.  
 5 MS. LAUREN WOLPERT [phonetic]: Hi, thank you.  
 6 I am Lauren Wolpert and I'm a resident of Del Rey and I  
 7 just have a couple concerns. Here I am, talking to the  
 8 microphone. As far as the houses are available, I mean I  
 9 was able to find out about this meeting, I was able to  
 10 find out a place like Power existed, but where is a  
 11 centralized location that one would find housing units if  
 12 and when they become available. Because I don't have an  
 13 association with any group that exists.  
 14 Something else that bothers me or concerns me  
 15 as far as development is as all these housing is being  
 16 grown up, who is taking care of the infrastructure.  
 17 Because I've noticed there's been a lot going on with the  
 18 County are in Culver City as far as having sewage leaks.  
 19 I know there's a lot of things kind of falling apart that  
 20 way. So who takes care of and who will improve the  
 21 infrastructure. Because within the developments there  
 22 also hasn't been an increase in park space even with the  
 23 expansion of something like Centenella [phonetic],  
 24 there's been an increase in bypass. And that would lead  
 25 nicely off to the, you know, the main bypass there. So

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1 that has been minus more than plus.

2 Also, as far as moderate income people, there's  
3 a lot of people in that area that have fallen through the  
4 cracks, that have spent a life of sofa surfing and have  
5 not been able to find any foundation in their life to  
6 move forward in it. I would appreciate, at the end of  
7 this, if you write all the available, good websites'  
8 addresses, emails -- if I found my pen, I could write  
9 them down.

10 As far as a Plan B, we have all these things  
11 being built right now and I'm sure a lot of developers  
12 want to see them to the end, but as we know, a lot of  
13 people's construction loans are for a small amount of  
14 time and interest rates are going up, and construction  
15 costs are going up, and a lot of people might not finish  
16 these buildings. What are we going to do because we are  
17 going to have a couple of half-finished apartments as  
18 much as we would like to think they are or think they're  
19 not, or whatever. It's just going to happen. It's just  
20 the nature of business.

21 Also, as far as domestic partners -- as far as  
22 financially helping one another, a lot of times we're not  
23 insured by each other's insurance, we cannot get each  
24 other's social security benefits once they're retired, we  
25 cannot get widow and widower's benefits. So, at this

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1 I don't have the time to do that. I feel like this is,  
2 you know, like a backroom deal going on that -- it's  
3 going to affect me and my family. And I have nothing to  
4 say about it. It's going to affect me. So, you know, in  
5 just some of the notes I wrote from tonight, you know, I  
6 want to know. It's like you guys, you know, talking  
7 about the density maybe of where we live right now or how  
8 many people are already here. And what it's like to just  
9 drive around Admiralty right now and how we see it just  
10 changing.

11 I mean, there's enough people here. And when  
12 the County says, you know what, okay Del Rey Shores,  
13 there's two hundred families there now. Go ahead, add  
14 another five hundred. How does that affect the way we  
15 live? You know, I mean, there's got to come a point  
16 where somebody, and I think it's got to be you people who  
17 really say, you know what? Yeah, things have got to  
18 change. We've got to stop all this madness of just grow,  
19 grow, grow for money.

20 [Applause]

21 You know, and you displace people, that really affects  
22 lives. And I want to talk about that. I'm the father of  
23 two that go to school here, locally. Now, I just found  
24 out I have to tell my children that they're going to be  
25 displaced. Maybe that's my fault because I don't live in

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1 point, we just have the right to divorce and how come we  
2 don't have the right to inclusion in this? How come  
3 everything has to be together when everything else, as  
4 far as benefits, we're not entitled to. I think that's  
5 all I have written down at this point. Thank you very  
6 much for your time.

7 MR. KREIMANN: Thank you very much.

8 [Applause]

9 MR. KREIMANN: Our next speaker is Mark  
10 Hensley. [phonetic]

11 MR. MARK HENSLEY [phonetic]: Yeah, I'm Mark  
12 Hensley. I live at Del Rey Shores and I guess the one  
13 thing that really strikes me about this whole thing  
14 that's happening is that I just found out about all this.  
15 I look on the board over here and it shows all these huge  
16 buildings being built -- what this big plan is and I've  
17 lived here all my life and I've never known about any of  
18 this stuff happening until somebody from the Power  
19 organization dropped something on my doorstep.

20 And so I have no idea what to say. As the guy  
21 that represents Del Rey Shores and the other developer  
22 who came up here, he had a nice typed out something to  
23 say to everybody. It sounded really nice. I would  
24 really love that opportunity to also put something  
25 together so that it sounds better. You know, right now,

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1 a two million dollar home. I can't afford that. Even  
2 though I've lived in this neighborhood my whole life,  
3 okay. And three generations of my family have lived  
4 here. But now I will not be able to afford to live here  
5 if your plan goes through. And so I just want to know,  
6 who's looking out for me and my family. Is it the  
7 government? And I'm just, I'm wondering about that  
8 because I've always felt that the government had my best  
9 interest in mind.

10 But now I'm really realizing that the guys with  
11 the suits, okay, that's where it's going. They're going  
12 to get it their way and I do feel the winds of change of  
13 blowing. And it's going to happen. So that leads me to,  
14 okay, so my family gets displaced, you know. What am I  
15 going to do? Where will I go to? They'll give me ninety  
16 days. I'm on a month-to-month right now even though I've  
17 lived in Del Rey Shores for seven, six years now. I'm on  
18 a month-to-month and literally tomorrow they could give  
19 me a ninety-day, and I don't know what I'm going to do.  
20 And what will I do with my children going to school.  
21 What will I tell my kids.

22 You know, these are things you really have to  
23 look at and slow down. Let's just slow down and let  
24 everybody know what's going on here because it's really  
25 incredible and I feel sorry for all the other people that

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1 live in the County, you know. And I don't think any of  
2 you probably live here. I really don't. I doubt that  
3 very much. Because, you know, you guys are putting  
4 policy together that's affecting us. Well, help us out.  
5 If you're going to help everybody in the whole County  
6 and, you know, I didn't realize that I wasn't in LA until  
7 pretty much today. You know, I thought I would be  
8 entitled to the same things people in LA are entitled to  
9 or Santa Monica.

10 If I am displaced, is somebody going to help me  
11 move? Because I'll tell you right now, I'm living month-  
12 to-month. I've got a wife that doesn't work, I've got  
13 medical problems at home. And it's real important to me.  
14 And somebody has to look out for the little guy, okay.  
15 And that's me. And all the other people back here,  
16 they're going to lose their housing and where will we go?  
17 You know what, I've lived at the beach my whole life and  
18 I don't want to move inland much more, okay. So please  
19 slow down and let us have a chance to just discuss this  
20 and do it with community involvement. It's not backroom  
21 deals; it's about community involvement and we should all  
22 work together, because it's going to happen, I know it's  
23 going to happen. But let's work together, okay. Thank  
24 you.

25 MR. KREIMANN: Thank you Mr. Hensley.

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1 However, the Marina's experience with  
2 redevelopment projects is that they do create income-  
3 restricted units as well as new, high quality housing  
4 stock to replace the older existing units which date from  
5 sixties and seventies here in the Marina.

6 The five projects approved in recent years have  
7 led to a hundred and seventy-nine income-restricted,  
8 affordable units and the several projects which are now  
9 in the approval process, including our Villa Venetia  
10 Project, are all planning to support affordable housing.

11 The current draft policy offers a fair and  
12 predictable process for determining feasibility and  
13 correctly recognizes that off-site alternatives may be  
14 appropriate depending on the facts.

15 MR. KREIMANN: Fifteen minutes -- fifteen  
16 seconds, I'm sorry.

17 MR. PETER ZACK: The County is doing the right  
18 thing by balancing competing goals and supporting  
19 redevelopment with appropriate consideration of  
20 affordable housing. We support those efforts and look  
21 forward to continuing toward our goal of maximizing the  
22 number of units we can feasibly support while still  
23 ensuring an appropriate return to the County and to  
24 justify our investment in new public infrastructure and  
25 environmental benefits for the Marina and all

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1 [Applause]

2 MR. KREIMANN: Our next speaker is Peter Zack.

3 MR. PETER ZACK: Good evening, members of the  
4 task force. My name is Peter Zack and I'm speaking on  
5 behalf of the Villa Venetia Project. We're currently  
6 working hard on this project and are very proud of our  
7 top quality design which we presented to the DCB last  
8 week. We absolutely recognize the importance of  
9 affordable housing in this region. This isn't lip  
10 service; we take responsibility to help to find solutions  
11 and, in fact, several of us have worked on other market  
12 rate projects that include affordable housing. We will  
13 draw upon that commitment and experience at Villa  
14 Venetia.

15 We support the proposed draft policy because we  
16 believe it seeks to provide the greatest net benefit to  
17 the community including affordable housing advocates  
18 because it allows for flexibility and a case-by-case  
19 analysis of the facts presented by each project in  
20 determining the best way to support affordable unit  
21 production. We understand that some tenants that  
22 currently live here in the Marina, including our existing  
23 tenants, don't want change because they hope that without  
24 redevelopment the status quo and existing rent will  
25 continue.

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1 stakeholders. We think the current draft policy will  
2 allow the positive outcome and allow the County to  
3 continue to generate leasehold revenues from the Marina  
4 to support other County social programs. We support the  
5 flexibility of the proposed policy. Thank you.

6 MR. KREIMANN: Thank you very much. Let's just  
7 give it to Mr. Bollein [phonetic].

8 FEMALE MEMBER OF AUDIENCE: [Inaudible]

9 MR. KREIMANN: Could I -- could I just make one  
10 more request and that's please don't interrupt the  
11 speakers. It's not appropriate. We're going to give  
12 everybody a chance to speak and just please, it'd make  
13 things work a lot smoother. So if I hear more  
14 interruptions, it's going to force me to tack more time  
15 onto the individual. I think that's fair. So, please,  
16 we're all adults here and we understand that it's a hot  
17 topic and it is a difficult one, but please, I will  
18 appreciate everybody being civil to one another and  
19 extending the courtesy of allowing them to speak of their  
20 particular views. With that, our next speaker is Deanna  
21 Kitamoro? [phonetic]

22 MS. DEANNA KITAMORO: [phonetic] Good evening,  
23 I'm Deanna Kitamoro, an attorney with Western Center on  
24 Law and Poverty. I'm here with my legal aide colleagues  
25 in support of Power.

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1 The first thing I want to know is that the only  
2 people who have come up here in support of the policy;  
3 the draft policy, have been the developers and there's a  
4 reason for that because the policy is inadequate. Ben  
5 Beach, my colleague, addressed some issues and Dan Brown,  
6 my other colleague, will address the other ones. I would  
7 like to point out a couple of other things.

8 First of all, the policy lacks guidance on  
9 important issues. Because the Mello [phonetic] Act  
10 requires affordable inclusionary units where feasible,  
11 the question of where the affordable units will be  
12 located and whether inclusionary units will be required  
13 all comes down to feasibility and in order to figure out  
14 feasibility, the County must decide on methodology and  
15 threshold levels.

16 But the policy is completely silent on these  
17 two issues and a lack of guidance results in  
18 inconsistency decisions. We know from comments made by  
19 the RPC that they want the County to provide them  
20 guidance. Otherwise for each proposal that comes along  
21 there will be a fight over which methodology and  
22 threshold to use. Unless these issues are resolved in  
23 the policy, you essentially have an ad hoc process. And  
24 the one point that is covered in the draft policy with  
25 regards to feasibility is that there can be an adjustment

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1 County's housing elements states that the County will  
2 coordinate with the private sector in the development of  
3 a variety of affordable housing for both rental and  
4 ownership. If you allow developers to build only rental  
5 for the affordable units, the County will have missed an  
6 easy opportunity to promote one of its housing element  
7 policies.

8 The draft Marina policy is highly problematic  
9 legally and for policy reasons. We encourage you to  
10 incorporate all of the comments that we have addressed in  
11 our letter to you and as well as to the Board of  
12 Supervisors. Thank you.

13 [Applause]

14 MR. KREIMANN: Thank you very much. Our next  
15 speaker is Suzanne Brown.

16 MS. SUZANNE BROWN: Good evening. My name is  
17 Suzanne Brown and I'm an attorney with the Legal Aid  
18 Foundation of Los Angeles. My testimony tonight is going  
19 to focus on some key problems with the replacement  
20 housing provisions of the draft policy.

21 First, the policy creates a number of improper  
22 exemptions from the Mello [phonetic] Act's replacement  
23 housing obligation. These include resident managers,  
24 students who pay their own rent and financially  
25 independent relatives who live together.

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1 up to two hundred points. However, the draft, again,  
2 does not provide any details on when such an adjustment  
3 should be made. So this policy is essentially ad hoc.

4 There is also discussion, or there's also a  
5 point about rent adjustments in the policy. Under the  
6 County's existing Marina policy, the County indicated  
7 that it was willing to reduce the ground lease by  
8 fifty-three percent. But the proposed policy states that  
9 the County is willing to reduce their ground lease on  
10 inclusionary units, but it does not provide any  
11 percentage, any sort of cap to that level. If there is  
12 no maximum level provided, then it is difficult to  
13 conduct any feasibility analysis, because a formula  
14 cannot be established.

15 So, once again, the County will have to conduct  
16 a case-by-case analysis because the policy does not spell  
17 any details out.

18 The last point that I want to make is about  
19 rental versus ownership. The draft policy allows all  
20 affordable units to be a rental, even where the market  
21 rate units are ownership. This is problematic for a  
22 variety of reasons. One of the main reasons to bar such  
23 pol -- tradition [?] is that affordable units and the  
24 tenants residing in them are likely to be stigmatized if  
25 all the other units are ownership. Moreover, the

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1 Second, while the Mello [phonetic] Act requires  
2 examination of current tenant incomes to determine if a  
3 replacement unit is required, the policy improperly  
4 allows examination of rent levels. This violates the  
5 Mello [phonetic] Act and it also makes little sense from  
6 a policy perspective because in today's housing prices,  
7 tenants are doubled up and overcrowded in order to afford  
8 rents.

9 Third, while the Mello [phonetic] Act requires  
10 replacement of low- and moderate-income units on a  
11 one-for-one basis, the policy improperly allows for  
12 replacement of bedrooms on a one-for-one basis. This  
13 constitutes an improper reduction in the Mello [phonetic]  
14 Act's replacement housing obligations. And again, it  
15 does not go very far in helping us in today's housing  
16 prices.

17 Fourth, while the proposed policy is proposing  
18 a thirty-year covenant on affordable housing units, we  
19 recommend that units remain affordable for the life of  
20 the ground lease. Otherwise, as all of the ground leases  
21 in the Marina come up for expiration, we're going to --  
22 I'm sorry. In thirty years, we're going to see a loss of  
23 all the affordable units at one time. Whereas if we keep  
24 them affordable for the life of the ground lease, we're  
25 not going to have a big loss of affordable units at one

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1 moment.

2 Fifth, pursuant to our reading of the Mello  
3 [phonetic] Act, like-for-like replacement of units is  
4 required. This means that if a low-income unit is  
5 demolished or converted, it must be replaced with a  
6 low-income unit. Unfortunately, the proposed policy is  
7 interpreting the Mello [phonetic] Act to allow  
8 replacement of any unit with a moderate-income unit.  
9 Again, this violates the Mello [phonetic] Act and in  
10 light of our housing crisis, is a very poor policy  
11 choice.

12 Sixth, while the policy allows developers to  
13 provide replacement units either on-site or elsewhere in  
14 the coastal zone, it would be much better policy for the  
15 County if replacement units were located on-site. It  
16 would meet the goals of the Mello [phonetic] Act which  
17 are anti-gentrification.

18 Seventh, the proposed policy improperly allows  
19 developers to satisfy their housing obligations through  
20 rehabilitation. This is not permitted by the Mello  
21 [phonetic] Act because it does not create net new units.  
22 Rehabilitation, moreover, is cheaper than new  
23 construction so it provides developers with a constant  
24 incentive to build off-site, which, again, is not in the  
25 best interests of the community and does not meet

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1 otherwise is low income. We're talking about taking a  
2 market rate unit and rehabilitating it to add to the  
3 low-income stock. So it would in fact increase the  
4 stock. That's the intent of the current draft.

5 MR. KREIMANN: Thank you. Our next speaker is  
6 Maryanne Weaver.

7 MS. SUZANNE BROWN: [Inaudible]

8 MR. KREIMANN: Hold on, hold on, you had your  
9 three minutes, so...

10 MS. SUZANNE BROWN: [Inaudible]

11 MR. KREIMANN: Okay, I'll allow it this one  
12 time.

13 MS. SUZANNE BROWN: [Inaudible] ...just in  
14 terms of the rehabilitation, if you're subsidizing the  
15 exiting market rate units to make it low-income, you're  
16 not adding to our housing stock in any way; you're just  
17 adding a subsidy to an existing unit and the point with  
18 such a housing crisis right now is to constantly increase  
19 the housing stock and increase the amount of low-income  
20 units.

21 Putting that issue aside, a separate point,  
22 along with this, is, it is immensely cheaper to subsidize  
23 and rehab an existing unit than it is to create a new  
24 low-income unit either on or off-site. So there is a  
25 constant economic incentive for the developer to rehab

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1 anti-gentrification interests. Developers should be  
2 required to satisfy their Mello [phonetic] Act  
3 obligations through either adapted reuse or new  
4 construction, because this will yield net new units and  
5 help our housing crisis. Thank you.

6 MR. KREIMANN: Thank you. Mr. Heifetz,  
7 [phonetic] you have a comment?

8 MR. HEIFETZ [phonetic]: Yeah. Just as a  
9 clarification: a couple, two points -- not to get into a  
10 debate with Ms. Brown and I'm sure we will talk more  
11 about this later, but the two points that I just wanted  
12 to make a comment on: one is the issue of rent levels.  
13 What the draft policy provides is we were only -- the  
14 draft policy provides that we will only look at rent  
15 levels versus tenant income when the tenant doesn't  
16 complete the survey and we otherwise don't have income  
17 information for that tenant. That's the only time that  
18 we -- that the draft proposer is looking at rent levels.  
19 So that's just one point. We can talk about that more  
20 later.

21 Second, the only other -- the second point, I  
22 just want to make sure, because I think the task force  
23 was clear, but maybe the document we submitted wasn't  
24 clear on rehabilitation. We're not at all, I don't think  
25 the draft policy is proposing to rehabilitate a unit that

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1 and subsidize a unit instead of creating a new unit and  
2 adding to our housing stock and creating a low-income  
3 unit. Thank you.

4 MR. KREIMANN: Thank you. Maryanne Weaver?

5 MS. MARYANNE WEAVER: Good evening. My name is  
6 Maryanne Weaver and I'm a resident of Marina del Rey.

7 MR. KREIMANN: I'm sorry, could you put the  
8 microphone closer to your -- thank you.

9 MS. MARYANNE WEAVER: Okay. For eight years I  
10 was a resident at Kingswood Village and before Kingswood  
11 Village was purchased by Art Stone [?] some of us tenants  
12 were informed that -- by Kingswood Management that the  
13 County had requested that Kingswood prepare a plan for  
14 affordable housing and they were working on that plan  
15 when Art Stone took over. The question we need answered  
16 is why the County did not insist that Art Stone continue  
17 with that plan. The Kingswood Village Complex consist of  
18 six hundred and twenty-four units and when Art Stone took  
19 over, a large percentage of those tenants were people who  
20 would have qualified for affordable housing and seniors  
21 between the ages of sixty-two and ninety years old.

22 If at least ten percent of affordable housing  
23 had been available, many of those -- it would have been  
24 at least sixty units -- and many of these people that  
25 were displaced, would have remained in their homes. At

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1 one of the new surrounding communities, Playa Vista,  
2 several apartment complexes are offering affordable  
3 housing. For instance, the Avalon del Rey offers ten  
4 percent low income and ten percent affordable income, a  
5 moderate income which is twenty percent total.

6 Due to the dark situation in the country today,  
7 many companies are outsourcing work, cutting back  
8 workforces, pensions being cut, wage concessions. And  
9 according to recent statistics, more than fifty percent  
10 of the American people have income of less than fifty  
11 thousand dollars per year and that percentage is rapidly  
12 decreasing.

13 These are hard-working people along with senior  
14 citizens, some who live right here in Marina del Rey who  
15 would like to stay here and they should stay here. But  
16 because of the outrageous rent increases, these people  
17 are being forced out of their homes and the sad thing is  
18 that they're not compensated for it as some of these  
19 surrounding areas do.

20 In revising the policy, we want the policy to  
21 state that every apartment complex in Marina del Rey be  
22 required to offer twenty percent affordable housing and  
23 that it not be limited to just the new complexes, but all  
24 complexes --

25 MEMBER OF AUDIENCE: Yayy.

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1 First, the purpose of the Mello [phonetic] Act  
2 was to restore local control over housing policy. Prior  
3 to the Mello [phonetic] Act, the state imposed affordable  
4 housing requirements on projects in the coastal zone. As  
5 a result, coastal cities and counties had little to no  
6 control over housing policy within a portion of their  
7 jurisdiction. The Mello [phonetic] Act was one of many  
8 acts introduced to give control over housing policy back  
9 to local governments.

10 Today, the Mello [phonetic] Act gives the  
11 County a great deal of discretion and flexibility to set  
12 housing policy on a countywide basis. The Mello  
13 [phonetic] Act does not set minimum percentages; it gives  
14 the County discretion to determine how best to meet its  
15 housing needs.

16 In addition, the Mello [phonetic] Act is  
17 premised on feasibility. Sorry about that. Feasibility  
18 --

19 [End of Tape 1, Side B]

20 [Start of Tape 2, Side A]

21 MS. ESTELLA DE JANOS [Phonetic]: Four factors:  
22 environmental, social, technical and environmental.  
23 Projects that cannot be successfully completed within a  
24 reasonable period of time are not considered feasible.  
25 Each of these of these factors including timing and

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1 MS. MARYANNE WEAVER: -- including the  
2 renovated and the non-renovated. Thank you.

3 MR. KREIMANN: Thank you very much. Our next  
4 speaker is Estella de Janos? De La Janos?

5 MS. ESTELLA DE JANOS [Phonetic]: Good evening.

6 MR. KREIMANN: Good evening.

7 MS. ESTELLA DE JANOS: My name is Estella de  
8 Janos of Latham & Watkins on behalf of Lion Capital, the  
9 lessee for Villa Venetia. We agree we need more housing,  
10 but the Mello [phonetic] Act alone will not solve our  
11 housing crisis. Requiring projects in the coastal zone  
12 to provide units on-site where land costs are the highest  
13 and density may be limited by deference to coastal  
14 resources, is among the least cost-effective options and  
15 will generate few units given the high cost per unit.  
16 The County needs to consider options that will maximize  
17 the number of affordable units.

18 This includes off-site alternatives that can  
19 take advantage of lower land costs, reduced environmental  
20 constraints and the ability to leverage private funds  
21 with tax credits and other financing incentives to  
22 maximize creation of affordable housing. As you evaluate  
23 your comments, the comments on the current draft, we know  
24 its consistency with the purposes of the Mello [phonetic]  
25 Act.

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1 likelihood of success are important and must be  
2 considered.

3 In addition, the County as landowner, must  
4 consider the revenue impacts. Rents from the Marina have  
5 been a substantial source of the County's unrestricted  
6 funding which is used for important countywide programs  
7 such as health and other social services. Reducing  
8 ground rents directly impacts this funding. The County  
9 must analyze the fiscal impacts of any alternatives to  
10 the proposed policies.

11 We support the current draft because it seeks  
12 to establish a clear and predictable compliance process  
13 and because it recognizes that the Mello [phonetic] Act  
14 gives the County flexibility to permit both on- and  
15 off-site compliance. The County is a landowner;  
16 therefore, it should consider ways to maximize production  
17 of affordable units.

18 Many of the housing units in the Marina are in  
19 need of renovation and lessees are eager to provide the  
20 County with new units that need energy efficiency,  
21 seismic and other current building standards and which  
22 will increase County revenues for important County  
23 programs. Clearly, more housing is needed at all levels,  
24 but until a policy is adopted, lessees will be  
25 discouraged from redeveloping the Marina and to no new

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1 income-restricted units will be created. Therefore, we  
 2 ask you to move swiftly to adopt a policy.  
 3 We look forward to providing supplemental  
 4 comments in writing as your process continues. Thank  
 5 you.  
 6 MR. KREIMANN: Thank you. Our next speaker is  
 7 Carla Andrews?  
 8 FEMALE MEMBER OF AUDIENCE: [Inaudible]  
 9 MR. KREIMANN: No, no. We're going to do it  
 10 now, yeah.  
 11 FEMALE MEMBER OF AUDIENCE: [Inaudible]  
 12 MR. KREIMANN: Great.  
 13 MS. CARLA ANDREWS [phonetic]: [Inaudible] ...  
 14 you know, that's the kind of presentation you'll get, I  
 15 suppose. You know, it's like -- well, the first thing  
 16 I'd like to say is we definitely do need workshops on  
 17 this matter, okay. And you have not succeeded in the  
 18 outreach that is required to even let this community  
 19 know --  
 20 [Audience speaking over]  
 21 We need workshops and we also need a better outreach,  
 22 absolutely. The purpose of the Mello [phonetic] Act is  
 23 to provide the -- not the minimum affordable housing, but  
 24 rather the maximum amount of affordable housing the  
 25 coastal zone and the most generous offering in support of

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1 I'd like to see an audit on the benefit of  
 2 these revenues, too. We all know how dismal failure the  
 3 County has been in these social benefit programs. And  
 4 for you to tell us that by eliminating housing in this  
 5 marina, how it's going to fix everything -- I want to see  
 6 an audit on that. I'd like to see how that really works  
 7 in numbers.  
 8 The Mello [phonetic] Act is a poor compromise,  
 9 at best. You know, when you're gentrifying an area like  
 10 this, it's just -- it's just -- you're asking, you're  
 11 giving these developers all the goodies in the world,  
 12 right. They get density housing, they get extra traffic  
 13 credits, they get new leases, extended leases, leases  
 14 without even looking at the bid. And then you give us  
 15 the crumbs of affordable housing. And now we see the  
 16 developer and the County fighting over those crumbs. And  
 17 we're just stand here left going, oh well, maybe we'll  
 18 give five percent.  
 19 MR. KREIMANN: You have fifteen seconds.  
 20 MS. CARLA ANDREWS: Because you're going to  
 21 help somebody, you're going to help social benefit  
 22 programs? I want to see some real proof of that.  
 23 MR. KREIMANN: Thank you very much.  
 24 [Applause]  
 25 MR. KREIMANN: Our next speaker is Nancy

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1 state law and its intent.  
 2 Marina del Rey, in its unique role to the  
 3 region as recreation, small craft harbor, does not  
 4 recognize housing as a priority and this is -- I'm going  
 5 to take this opportunity to say that when you are looking  
 6 at a new lease, and a new project, you have denied us a  
 7 bid on that project. The public has a right to look at  
 8 that property before you give an extended lease or new  
 9 leases or anything else to revisit that property to  
 10 determine if we want housing in the area at all.  
 11 For instance, your Del Rey Shores -- it's two  
 12 hundred units now. Maybe we would like to see that taken  
 13 off the map and a baseball field put there. It's our  
 14 choice. We should be able to say something about that.  
 15 It is publicly-owned marina. We keep saying "county-  
 16 owned marina," but this marina belongs to the public. We  
 17 paid for it; we have a land use plan, we have a local  
 18 coastal plan, and you need to adhere to that.  
 19 So housing is not a priority in the marina,  
 20 anyway. However, we do have housing here and as it  
 21 started, it was a fair reasonable -- it was fair and  
 22 reasonable rent. The lessees' association sued to get  
 23 out from under that obligation. The County rolled over  
 24 and said, well, you know, here's a way to maximize our  
 25 revenues.

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1 Marino?  
 2 MS. NANCY MARINO: Good evening. My name is  
 3 Nancy Vernon Marino and I am a Marina del Rey resident.  
 4 That's M-A-R-I-N-O, I think you wanted me to spell that.  
 5 Hello to all of those of you who see me  
 6 practically every meeting. I didn't have a lot of time  
 7 to prepare today because there were actually three public  
 8 hearings on Marina del Rey projects last week. The  
 9 County departments and commissions and everything --  
 10 they're paid full-time to do this job and they have come  
 11 here very well prepared. I sat during your presentation  
 12 scribbling down my reactions on what you have presented.  
 13 And thank you, it was a fairly clear presentation.  
 14 I would like to first say that notice was  
 15 perhaps legally given, but notices are not even a needle  
 16 in a haystack; they are a piece of straw in a haystack.  
 17 It is very, very difficult for members of the public to  
 18 find each and every meeting because there are so many of  
 19 them. I mean, we are just -- we are inundated. Every  
 20 project has several meetings and different commissions  
 21 and boards, and so forth.  
 22 So, the County's obligation is not just to  
 23 notify, but to do County outreach because this is such a  
 24 comprehensive redevelopment project and we would like to  
 25 have public workshops resolving major policies such as

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1 this one before these projects go railroading through.  
 2 It's just impossible, as members of the public. We're  
 3 working full-time and then we're doing this in our spare  
 4 time, trying to come prepared, trying to bring the issues  
 5 before you that matter.

6 So we would like to have workshops on this  
 7 before you do your revised report. We think this is  
 8 necessary.

9 To get to your policy itself, number one, I  
 10 would like to ask why are there no community  
 11 representatives on your task force. That --

12 [Applause]

13 That seems to me to be the most glaring aspect of this  
 14 whole thing. The community is, you know -- you're  
 15 bringing this to us like little children. This is very  
 16 insulting and we would like to see a member of the  
 17 community who is very involved in housing issues be  
 18 included in this task force. That will allow us to get  
 19 better information more quickly.

20 I'm happy to see that the in lieu fee will be  
 21 abolished. I leave [?] Ms. Brown's testimony about the  
 22 covenant lasting for the term of the lease -- I support  
 23 that. I think that's very important.

24 The fourth one, the proposal to base  
 25 replacement units on this income survey is absolutely

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1 require maybe only a few or perhaps even no replacement  
 2 units. That doesn't seem like a very good policy to me.

3 MR. KREIMANN: Fifteen seconds, Ms. Marino.

4 MS. NANCY MARINO: Okay, all right. Well, all  
 5 right.

6 Second, next one. The item on vacant units.  
 7 They need to be classified in proportion to the occupied  
 8 units. Otherwise there's just, there is the motivation  
 9 for lessees to keep -- to get those units vacant before  
 10 these surveys are done. This is not acceptable.

11 Number six: On your evictions for cause. If  
 12 the cause was nonpayment of rent, I think there needs to  
 13 be an investigation into the rental rate increases on  
 14 that unit, starting from perhaps January 1st of this year  
 15 or at some base point to determine that they weren't just  
 16 increased rent out of a unit. You know, that they no  
 17 longer could afford it and so that they voluntarily  
 18 moved.

19 MR. KREIMANN: Okay.

20 MS. NANCY MARINO: Is there someone who could  
 21 grant me some time?

22 MALE VOICE: [Inaudible]

23 MS. NANCY MARINO: Okay. He's going to cede me  
 24 his time. Is that acceptable?

25 MR. KREIMANN: Unfortunately, it's my time.

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1 ludicrous. I don't even know where to start with this.  
 2 You're going to ask people for all of this personal,  
 3 private information and insist that they give testimony  
 4 in these -- or in their responses under penalty of  
 5 perjury. Now, you're going to ask for information on all  
 6 household members and supposedly exclusively to determine  
 7 replacement housing eligibility. I don't trust that that  
 8 information is going to be used just for that. And I  
 9 would not be very -- I would be very reluctant to give  
 10 that information out. I might wonder if I were  
 11 struggling to pay my rent if this information might not  
 12 be used by the lessee to try to shove me out a little bit  
 13 early, get rid of me because what if they think I don't  
 14 have enough money to pay the rent?

15 And it also -- it predetermines based on some  
 16 government criteria how people should be spending their  
 17 money and what is appropriate. Right now, to use your  
 18 example of a two hundred-unit complex being replaced by a  
 19 five hundred-unit one, well, supposing -- let's see,  
 20 where's that. Okay, if all the units in the existing two  
 21 hundred building are affordable housing now, what if none  
 22 of the present occupants -- or what if the present  
 23 occupants are either unwilling or unable to prove that  
 24 they fit the government-determined criteria for need.

25 That would mean that the new building would

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1 So, I'll give you one last -- one last comment.

2 MS. NANCY MARINO: I have a couple more,  
 3 actually. If he has three minutes and he cedes it to me,  
 4 why is that your time?

5 MR. KREIMANN: It's my time. It's -- last  
 6 comment.

7 MS. NANCY MARINO: Oh.

8 MR. KREIMANN: Well, go ahead.

9 [Audience speaking over]

10 MR. KREIMANN: Go ahead.

11 MS. NANCY MARINO: All right. I would like to  
 12 know how aggressive County will be with regard to  
 13 unfeasibility appeals. The replacement and inclusionary  
 14 housing off-site provides for siting within three miles  
 15 of the coastal zone where the land values are much lower  
 16 than in the coastal zone. This -- sorry. This provides  
 17 a huge incentive for developers to engineer  
 18 unfeasibility. So, I want to know what protections --  
 19 how you determine -- I want to know how aggressive you  
 20 will be in challenging any unfeasibility claim.

21 And also, as far as if the housing is replaced  
 22 off-site, I think there needs to be a greater than one-  
 23 to-one ratio -- because of this different in cost, it's  
 24 much cheaper to build inland because of the land values.  
 25 So there should be more units replaced, not simply the

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1 number that would be built here in the coastal zone. And  
2 then --

3 MR. KREIMANN: Last comment.

4 MS. NANCY MARINO: Okay. It's all I could come  
5 up with anyway. In the additional provisions there are  
6 two references to applicants' proposals: one for rental  
7 and ownership units and one for ownership units. Marina  
8 del Rey is public land, mandated for a small craft harbor  
9 and public recreation. Why on earth is the County  
10 contemplating and even here promoting ownership? This is  
11 just wrong. We have not been able to own here in the  
12 Marina for years. We were told that's because it's  
13 public land and no one can own here. So why are you  
14 offering our public land for sale? Thank you.

15 [Applause]

16 MR. KREIMANN: Thank you. Our next speaker is  
17 Steve Clair [phonetic].

18 MR. STEVE CLAIR [phonetic]: Good evening,  
19 members of the Affordable Housing Task Force. My name is  
20 Steve Clair. I am Executive Director of the Venice  
21 Community Housing Corporation. We're a non-profit,  
22 affordable housing developer that operates in Venice and  
23 Mar Vista area. We're vitally concerned about the loss  
24 of affordable housing in our community and within the  
25 coastal zone. Venice Community Housing Corporation first

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1 within the coastal zone. One must ask the question, what  
2 is the proposed policy trying to accomplish. If it's to  
3 interpret the Mello [phonetic] Act in a way that would  
4 minimize the obligation to provide affordable housing in  
5 the Marina, maximize the profit to developers who will  
6 reap -- the profits of developers will reap from leasing  
7 and developing this public land, the policy succeeds.  
8 If, however, the County is trying to advance a public  
9 policy that recognizes and I'm quoting now from the  
10 Government Code: "There exists within the urban and  
11 rural areas of this State a serious shortage of decent,  
12 safe and sanitary housing for persons and families of low  
13 and moderate income and consequently a pressing and  
14 urgent need for the preservation and expansion of low-  
15 and moderate-income housing supply."

16 This policy fails miserably. I know I don't  
17 have the time -- in the time that's been allotted to me  
18 to speak specifically in any detail about the various  
19 areas that the policy is deficient. But let me just  
20 itemize some.

21 Regarding the policy of replacement units, the  
22 policy, as other people have mentioned, authorizes  
23 several exemptions from replacement requirement that are  
24 not authorized by the Mello [phonetic] law. These  
25 include the units occupied by managers, students, units

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1 investigated the issue of the City's non-compliance with  
2 the Mello [phonetic] Act back in the early nineties and  
3 spent a considerable amount of time trying to work with  
4 the City to develop policies and procedures which would  
5 fairly implement the Mello [phonetic] law.

6 When the City refused to develop such plans or  
7 effectively implement the Mello [phonetic] law, we were  
8 among those who helped to bring a lawsuit against the  
9 City of Los Angeles and thanks to the Court of Appeal and  
10 litigation which, I presume, that you are familiar with,  
11 the Court directed that the City did have a mandatory  
12 obligation to comply with the requirements of the Mello  
13 [phonetic] Act. And after the Court of Appeals made that  
14 directive to the City, I'll have to say that the City did  
15 in fact operate in good faith and worked with the  
16 plaintiffs and the plaintiffs' attorneys to develop  
17 policies and procedures which did actually comply with  
18 the spirit as well as the letter of Mello [phonetic] law.  
19 And I would say that we seek no less from the County.

20 We've already sent a letter to the Board of  
21 Supervisors about the issue. I have copies here. I'd  
22 like to give them to the Affordable Housing Task Force  
23 for its consideration as well. In sum and substance, the  
24 policy as crafted does not further the underlying  
25 objectives of preserving and expanding affordable housing

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1 that have been vacant within a year from the term sheet  
2 negotiations.

3 It only requires affordability for these  
4 replacement housing for thirty years. Other people have  
5 commented on that. And it allows for the rehabilitation  
6 of existing units also rather than replacement with new  
7 units. Regarding inclusionary units in new construction,  
8 the biggest loophole is that the County policy sets no  
9 requirement, only a goal. And that goal is only five  
10 percent for very low and ten percent for low in the new  
11 units to be constructed.

12 And, of course, the feasibility as presented by  
13 -- in this draft policy, rests on the pro forma of the  
14 developer. The City of Los Angeles came to the just  
15 conclusion that the developer was not -- was always going  
16 to be able to manipulate his pro forma, is always going  
17 to demonstrate that he didn't have the, you know, the  
18 ability to create the affordable housing within the  
19 project.

20 So the City did its own analysis and came to a  
21 categorical conclusion that it was feasible in projects  
22 of excess of ten units to provide twenty percent of those  
23 units that is affordable to low-income people or ten  
24 percent affordable to low-income, very low-income people.

25 MR. KREIMANN: Fifteen seconds.

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1 MR. STEVE CLAIR: I would also then state that  
2 the thirty units -- I agree with the previous speaker who  
3 said that it should be at least the term of the lease, if  
4 not in perpetuity. There's no -- why not? That's the  
5 purpose to be furthered. Double counting the density  
6 units and the -- and the Mello [phonetic] units. You  
7 know, both of those laws are intended to advance the  
8 increase of affordable housing. Allowing a developer to  
9 count this same unit to satisfy two policies is clearly  
10 contrary to the objectives on the policy that underlies  
11 both of those laws.

12 So, in sum, I urge you to throw out the  
13 existing draft, start over, keeping in mind that the  
14 affordable housing crisis that exists in this County and  
15 the public policies that underlie the law that you are  
16 charged to implement and the clear and unambiguous  
17 language of the law itself. Thank you very much.

18 MR. KREIMANN: Thank you, Mr. Clair.

19 [Applause]

20 MR. KREIMANN: Our next speaker, Violetta  
21 Hudson. Is she here? Okay, we'll move on. Karen  
22 [phonetic] Stone, please.

23 HELEN GARRIT: [Inaudible]

24 MR. KREIMANN: Helen, I'm not going to do this.

25 HELEN GARRIT: [Inaudible] ... Supervisors'

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1 to make a comment. You know, we've been extremely  
2 patient and we've sat here, listened to all the  
3 testimony. I'm asking again to please have some decorum.  
4 The fact that you feel you have more to say -- you've had  
5 your three minutes allotted. It's not fair to the other  
6 side either that the speakers that have already spoken,  
7 they didn't have the benefit of additional time to  
8 present additional testimony. It's not fair to those  
9 individuals. So let's get back to the program and let's  
10 have our next speaker. So, yeah, I'm very disappointed  
11 in that outburst. But that's my personal opinion.

12 My next speaker, you've spoken already, haven't  
13 you?

14 MS. KAREN STONE: No, you just called me.

15 MR. KREIMANN: Dorothy?

16 MS. KAREN STONE: No.

17 MR. KREIMANN: Okay, let's call Karen Stone,  
18 then.

19 MS. KAREN STONE: I don't know -- is this  
20 working?

21 MR. KREIMANN: It's working. Go ahead.

22 MS. KAREN STONE: You know, I -- it's been very  
23 difficult for all the citizens in the Marina these past  
24 few years, but I think that the senior citizens and for  
25 the elderly it's been really difficult. I mean, I know

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1 intention -- to make the Marino look like downtown  
2 Manhattan, but they will preserve this new housing for  
3 the rich only. A modest one-bedroom apartment will rent  
4 for two thousand three hundred dollars a month. And I  
5 don't think people can afford that. It's the  
6 Supervisors' job to plan for low-income housing. The  
7 public-private joint venture under the Mello [phonetic]  
8 Act is the only just way that the five Supervisors can  
9 possibly respond to this housing crisis to offer only  
10 five percent is disgusting. It's unjust.

11 MR. KREIMANN: Helen --

12 MS. HELEN GARRIT: The five percent policy  
13 being offered clearly demonstrates a supervisorial bias  
14 towards rich developers and rich people who can already  
15 afford to live anywhere.

16 MR. KREIMANN: Helen -- you've got to preserve  
17 --

18 MS. HELEN GARRIT: The Supervisors are mandated  
19 and required to build affordable housing in such a tight  
20 market. The people of the Marina want affordable rents  
21 in their neighborhood. Every person here should demand  
22 the Supervisors reject this draft plan and do their job.  
23 Give us affordable housing in the Marina.

24 [Applause]

25 MR. KREIMANN: Thank you. I think -- I'd like

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1 how hard it's been on people like me and people in my age  
2 bracket, but that's what you're seeing. It's very scary.  
3 So, that's what's going on.

4 I came along to talk a little bit about what  
5 she was saying. I've lived in the Marina for eighteen  
6 years and I want to know why all of you are making -- and  
7 LA County is making decisions for our city. The citizens  
8 should be making decisions for our city. And the big  
9 problem is, we are not even allowed to vote for the Mayor  
10 of LA because we don't live in the City of LA and we  
11 don't have our own representation in LA County because LA  
12 -- for the city, because LA County won't allow it. So we  
13 have a huge problem here and it's got to stop. The  
14 citizens of Marina del Rey should be allowed to make the  
15 choices for their own city.

16 And other cities get to make their own choices.  
17 Why can't we? So, I think you're going to see a lot of  
18 changes. People are really getting tired of it.

19 The next thing is I have watched the past few  
20 years all the business owners getting pushed out. It is  
21 a known fact that LA County has decided a few years ago  
22 that they had no money. And Marina del Rey was the  
23 biggest money maker for LA County. So they decided to  
24 gouge all the citizens in the Marina because they need  
25 money. Well, first of all, I want to know where all our

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1 taxes are, because I know I pay a fortune in taxes.  
 2 And the citizens of Marina del Rey are not LA  
 3 County's mother and father. You know, we were not put on  
 4 this earth to support the County. LA County is one of  
 5 the biggest counties in America and if they don't have  
 6 any money, there's a problem. And we deserve to know  
 7 where all of our taxes are going. And it should not be -  
 8 - we should not have to be paying astronomical amounts of  
 9 rent in this city because LA County has no money.  
 10 I have just been forced out of my second  
 11 apartment in two years because of astronomical rent  
 12 raises. And I would also like to know with all the  
 13 problems with Art Stone why the County is allowing them  
 14 to continue buying -- to buy up every single apartment  
 15 complex in this city.  
 16 [Applause]  
 17 If you go to the courthouse, they have over  
 18 thirty-five hundred lawsuits against them. I had to sue  
 19 them; they wouldn't even give me my security deposit  
 20 back. Their attitude toward everyone is "sue us."  
 21 Everything they're doing is illegal, immoral, unethical.  
 22 They are raising rents anywhere from five hundred to two  
 23 thousand dollars a month and LA County just doesn't care.  
 24 But you guys cannot make decisions for our city anymore.  
 25 Because I'll tell you something, everyone is sick of it,

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1 really sick of it.  
 2 [Applause]  
 3 Yeah, I mean, because no one -- you're supposed  
 4 to be representing the citizens of our city, but no one  
 5 is.  
 6 [Applause]  
 7 MALE MEMBER OF AUDIENCE: Hear, hear.  
 8 MR. KREIMANN: Fifteen seconds.  
 9 MS. KAREN STONE: All right, well --  
 10 MR. KREIMANN: Did you make a comment about the  
 11 policy?  
 12 MS. KAREN STONE: Well, also, we need rent  
 13 control in this city. I want to know why people like  
 14 Marina Harper and Art Stone can just raise rents on  
 15 people -- I just moved in to Marina Harbor. I moved in  
 16 for a couple months, I got a letter: we just want you to  
 17 know that when your lease is up, we're going to raise  
 18 your rent three hundred dollars. Art Stone's raising  
 19 rents nine hundred dollars a month on people. I want to  
 20 know why that's being allowed. There's a problem here.  
 21 And yes, we need affordable housing, but we also need  
 22 rent control, because not everyone can pay three thousand  
 23 dollars for a one-bedroom, four thousand dollars for a  
 24 two-bedroom. There's a problem.  
 25 The owners of the apartment complexes should

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1 not be allowed to just raise rents to whatever they want  
 2 and force people out.  
 3 MR. KREIMANN: Thank you.  
 4 MS. KAREN STONE: And it's really serious.  
 5 MR. KREIMANN: Thank you.  
 6 [Applause]  
 7 MR. KREIMANN: Our next speaker is Ted Vance.  
 8 FEMALE MEMBER OF AUDIENCE: [Inaudible]  
 9 MR. KREIMANN: Ted Vance?  
 10 MALE MEMBER OF AUDIENCE: [Inaudible]  
 11 MR. KREIMANN: Yes.  
 12 [Audience member speaking over]  
 13 MR. KREIMANN: No, it's Ted Vance or no one.  
 14 [Inaudible]  
 15 MR. VANCE [?]: I guess I'm watching this and  
 16 I'd like --  
 17 MR. KREIMANN: Can you turn the microphone up,  
 18 please.  
 19 MR. VANCE: I'm watching the proceedings here  
 20 and I'm interested in how it would be if a developer who  
 21 wants to make a development would do his own feasibility  
 22 study as to whether or not it's feasible to follow the  
 23 law. We have rule of law here.  
 24 [Applause]  
 25 This is the United States. We don't ask

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1 developers if they can comply with the law. We tell them  
 2 they will and we check that they do. That's all I have  
 3 to say. Thank you.  
 4 MR. KREIMANN: Thank you. Cindy Sterrit  
 5 [phonetic].  
 6 MS. \_\_\_\_: Thank you, Mr. Kreimann. I think  
 7 it's a violation of our free speech if somebody gets up  
 8 here and says they want somebody else who may have a  
 9 little more knowledge and has had time to prepare can  
 10 speak for them. I don't think you can deny the person  
 11 that privilege. Thank you.  
 12 MR. KREIMANN: Hold on.  
 13 [Audience speaking over]  
 14 MR. KREIMANN: I think it is that the task  
 15 force has the time -- the task force has the ability to  
 16 set rules for the agenda so that everyone can speak just  
 17 like we do at Regional Planning Commission hearings, as a  
 18 lot of you know. In fact, in the Regional Planning  
 19 Commission hearings we often have the Sheriff to handle  
 20 situations where there are outbursts and where people get  
 21 up and speak when they're not supposed to. I'm not  
 22 advising, but if we do have any further hearings, that  
 23 might be necessary here. We're trying to run a decent  
 24 decorum here and give everyone respect.  
 25 MS. \_\_\_\_: Are you interested in knowing what

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1 the public thinks about this? Or are you simply  
2 interested in holding a session so you can say you  
3 solicited our input?

4 MR. KREIMANN: The next speaker, please. Cindy  
5 Sterrit?

6 MS. CINDY STERRIT [phonetic]: Hi, I'm Cindy  
7 Sterrit from Latham & Watkins. We're helping Villa  
8 Venetia, but I also handled the most recent case in the  
9 City of Los Angeles on the Mello [phonetic] Act and  
10 worked closely with the Legal Aid lawyers that are here.

11 I have a different perspective from some of the  
12 people that have spoken. I think the County has been  
13 tremendously responsive. Compared to the City, the City  
14 has had an inland settlement agreement for six years  
15 coming out of a lawsuit. That interim settlement  
16 agreement was written in the year 2000. They have still  
17 not been able to adopt a permanent policy.

18 The City agreement that was cited here earlier,  
19 I think not very clearly, indicated that they required  
20 double the affordability percentages ten and twenty.  
21 That's because they reflected what State law was at that  
22 time. The County is accurately reflecting what the  
23 density bonus percentages are now. Sacramento made those  
24 percentages after a lot of review of what the costs are  
25 of subsidizing affordable units and to what extent they

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1 you proposed a policy, the Board of Supervisors has  
2 already had one hearing on that policy, you're having a  
3 hearing tonight. There will be environmental review.  
4 So, again, in comparison to the City, and I do a lot of  
5 work in the City, the County is moving quickly and  
6 listening to everyone. We appreciate that. We look  
7 forward to continuing as part of this process, but we do  
8 think that in fairness, the responsiveness really needs  
9 to be recognized. Thank you.

10 MR. KREIMANN: Thank you very much. I have one  
11 last speaker, the final speaker. Is there anyone else  
12 that needs to fill out a card that has not spoken?

13 Dorothy Franklin? Yes.

14 MS. DOROTHY FRANKLIN: I would like to concede  
15 my time to [inaudible].

16 MR. KREIMANN: I can't allow you to do that.  
17 [Audience speaking over.]

18 MR. KREIMANN: What we can do for the balance  
19 of our time, then, is we would be more than happy to  
20 entertain any questions on the draft policy that we can  
21 clarify for you on --

22 FEMALE MEMBER OF AUDIENCE: [Inaudible]

23 MR. KREIMANN: I'm not going to take any  
24 statements in that the questions please need to refer to  
25 the draft policy. So we'll take about a ten to fifteen

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1 could cause the private sector to create affordable  
2 units.

3 The cost of subsidy on the Venice project that  
4 we worked on was over a million dollars a unit for on-  
5 site subsidies. The cost of off-site subsidies even in  
6 an affordable housing project is going to be two hundred,  
7 three hundred, four hundred thousand dollars a unit. So  
8 these are very, very big numbers. The reason we think  
9 the County's policy is appropriate is that the County  
10 should think about do we want to spend a million dollars  
11 a unit with no choice as to whether we should allow a  
12 developer to partner with an affordable housing provider  
13 and perhaps provide five or six units off-site instead of  
14 one unit on-site. We think that's a very appropriate  
15 public policy consideration.

16 Your job, the County's job is the big picture.  
17 Obviously all the people here, including me, are here  
18 with specific properties in mind. But we think that is  
19 an important factor to think about -- how is it going to  
20 affect the big picture.

21 The County has moved very quickly. Concerns  
22 were expressed, again, by some of the people in this room  
23 at project hearings about your policy within the last few  
24 months. You immediately said, okay we're going to change  
25 our current policy, we're going to adopt a new policy,

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1 minute Question/Answer.

2 FEMALE MEMBER OF AUDIENCE: I have a question -  
3 - the policy that --

4 MR. \_\_\_\_: To the microphone, please.

5 MR. KREIMANN: Sorry.

6 MR. \_\_\_\_: Please identify yourself.

7 CARLA ANDREWS [phonetic]: Carla Andrews. I  
8 would ask, you know, number one, the boating community  
9 has been compartmentalized and separated. They are  
10 tenants of Marina del Rey and there already exist for  
11 them affordable housing that's been available  
12 historically throughout all of Marina del Rey. So, I  
13 think that you should also make sure that since that  
14 housing is already there, it exists, it meets all of your  
15 criteria for feasibility -- I want to make sure that the  
16 boating community is addressed in this policy and not put  
17 aside and underrepresented as they are now.

18 MR. KREIMANN: Okay, thank you.

19 MS. CARLA ANDREWS: My question is --

20 MR. KREIMANN: Your question.

21 MS. CARLA ANDREWS: How will that -- how will  
22 that be placed in your policy? I didn't see much about  
23 it in this new draft.

24 MR. KREIMANN: Okay, thank you. I believe the  
25 answer, and maybe Mr. Farnen can amplify.

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1 MR. FARNEN [Phonetic]: This policy will deal  
 2 strictly with affordable housing. It will not deal with  
 3 voter rights or other Board issues.  
 4 MS. CARLA ANDREWS [?]: But it is an important  
 5 issue.  
 6 MR. FARNEN: It will not be dealt with in this  
 7 policy.  
 8 MR. KREIMANN: Does anybody else have a  
 9 question -- on the policy, please.  
 10 MS. \_\_\_\_: Hi, thank you very much. Quick  
 11 question. I just want to know in terms of the public  
 12 comment process today, are you going to be preparing a  
 13 report for the Board of Supervisors that merely reflects  
 14 the comments today, or will you be taking our comments  
 15 back considering revisions to the plan, proposing  
 16 revisions and then taking them back to the Board?  
 17 MR. KREIMANN: The task force will be taking  
 18 your comments, they will be reviewing them and we will be  
 19 presenting options to the Board of Supervisors based on  
 20 your comments. Any other questions? Last question.  
 21 MS. \_\_\_\_: The last question?  
 22 MR. KREIMANN: That's correct, you're the last  
 23 question.  
 24 MS. \_\_\_\_: When will we have our workshops?  
 25 And when will you outreach to the rest of this community?

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1 housing policy affects every single person in Marina del  
 2 Rey. I think a mailing to every single person in Marina  
 3 del Rey is a minimum requirement.  
 4 [Applause]  
 5 MR. KREIMANN: Karen, Karen -- last question,  
 6 Karen.  
 7 MS. KAREN STONE: [Inaudible]  
 8 MR. KREIMANN: Can you come to the mike,  
 9 please?  
 10 MS. KAREN STONE: [Inaudible]  
 11 MR. KREIMANN: Hold on, come to the microphone.  
 12 MS. KAREN STONE: Instead of a meeting at five  
 13 o'clock when most people work, can we make it like  
 14 six-thirty when people can get home from work and they  
 15 know about it. Most people are still working at five  
 16 o'clock.  
 17 MR. KREIMANN: Well, I think the reason that we  
 18 have the meeting until eight o'clock is so that we could  
 19 include that particular population at this point.  
 20 MS. KAREN STONE: Yeah, but what I think what -  
 21 - I think most people, if they don't come near the  
 22 beginning, they're not going to show up. At least if you  
 23 could make it six, six-thirty, maybe a little later?  
 24 MR. KREIMANN: Okay. We'll take that under  
 25 advisement.

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1 It has to be before your ninety days and sooner the  
 2 better so that people have time.  
 3 MR. KREIMANN: Thank you. Thank you.  
 4 [Applause]  
 5 MR. KREIMANN: My previous answer hasn't  
 6 changed. The answer is that we have a deadline to meet.  
 7 The input that we have -- that you have provided today  
 8 will be considered. We'll put a report together. We do  
 9 not plan on having any workshops.  
 10 FEMALE MEMBER OF AUDIENCE: [Inaudible]  
 11 MR. KREIMANN: We'll be sensitive to your  
 12 issues -- thank you.  
 13 MR. \_\_\_\_ [from the stage]: Santos, we're going  
 14 to provide a copy of our report to the Board of  
 15 Supervisors in what, two weeks in advance of the meeting  
 16 and we'll do our best to ensure that the community is  
 17 advised as to what that hearing date is. It'll be on the  
 18 Beaches and Harbors website. I promise we will post  
 19 notice here at the library and our Beaches and Harbors  
 20 headquarters. We'll make sure that The Argonaut  
 21 publishes that. We'll do a direct mailing list if anyone  
 22 wants to give me -- give Santos their card, we'll be  
 23 happy to provide that report to them in advance of the  
 24 meeting.  
 25 FEMALE MEMBER OF AUDIENCE: Excuse me, this

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1 MS. KAREN STONE: For all the workers.  
 2 MR. KREIMANN: Thank you.  
 3 MS. KAREN STONE: Okay, thank you.  
 4 MR. KREIMANN: I want to thank everyone for  
 5 coming.  
 6 FEMALE MEMBER OF AUDIENCE: [Inaudible]  
 7 MR. KREIMANN: Yes. Yes. Do we have -- ? You  
 8 know what I've done, is we put it -- there's a sheet of  
 9 paper on the table over there that has my information, so  
 10 you can just as you exit, you can go ahead and pick it  
 11 up.  
 12 MR. \_\_\_\_ [from the stage]: I emphasize that  
 13 you let Santos know if you want to know the date of the  
 14 public hearing before the Board of Supervisors, let us  
 15 know so we can get you a copy of the report. Okay,  
 16 please grab the information on the side table. We want  
 17 to make sure you have that in your hands so that if you  
 18 have an interest, you can appear before the Board. Thank  
 19 you.  
 20 MR. KREIMANN: Yeah, I do have the speaker  
 21 cards, but a lot of these do not have addresses, so I  
 22 will be sending out whoever has the speaker card with the  
 23 complete information, will get the policy -- the report.  
 24 Thank you for attending. We appreciate your comments.  
 25 Thank you very much.

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## **ATTACHMENT 2**

### **Additional Public Comments - Written Correspondence**

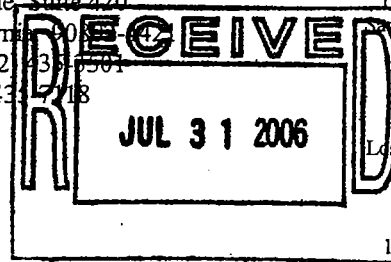


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July 28, 2006

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**Re: Comments Re: Proposed Marina Del Rey Affordable Housing Policy**

Dear Honorable Supervisors:

The Legal Aid Foundation of Los Angeles (LAFLA) submits this letter on behalf of its client, People Organized for Westside Renewal (POWER) and its colleague, the Western Center on Law & Poverty (WCLP), regarding the County's June 22, 2006 proposed Marina Affordable Housing Policy.

On April 3, 2006, we submitted a letter outlining the various legal problems with the County's existing Marina Affordable Housing Policy. As noted in that letter, LAFLA, WCLP and POWER are intimately familiar with the Mello Act (Gov't Code § 65590). In 1993, WCLP and the Legal Aid Foundation of Long Beach (now part of LAFLA) filed a lawsuit against the City of Los Angeles, alleging that the City failed to comply with its affordable housing obligations under the Mello Act. (Venice Town Council, et al. v. City of Los Angeles, L.A. Super. Ct. No BC089678.) That suit resulted in a published opinion in our favor (47 Cal.App.4<sup>th</sup> 1547). The City of Los Angeles ultimately entered into a Settlement Agreement with LAFLA and WCLP in 2001 and adopted Interim Administrative Procedures for complying with the Mello Act, which currently govern the City's Mello Act compliance process.

Although the County's proposed Marina Affordable Housing Policy addresses some of the issues we raised in our April 3, 2006 letter, many issues remain unresolved and new issues have presented themselves. This letter sets forth our concerns with the proposed new Policy.

## **Replacement Housing**

1. **Exemptions from Replacement Housing.** The Mello Act requires the replacement of low and moderate-income units converted or demolished in the coastal zone. The Mello Act does not provide exceptions from this requirement. Accordingly, the proposed Policy improperly exempts the following categories from the Mello Act's replacement housing obligations:

- (a) resident managers;
- (b) sub-lessees;
- (c) students whose parents claim them as dependents, or whose parents guarantee the rent, even if the students are paying the rent themselves; and
- (d) units that are vacant as early on in the process as commencement of term sheet negotiations.

2. **Method of Determining Household Income.** The Mello Act provides, "[i]n the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply *if at least one such person or family*, excluding dependents thereof, is of low or moderate income." Cal. Gov't Code Sec. 65590(b) (emphasis added).

Pursuant to the Mello Act, the County must obtain current tenant income information to determine the number of replacement units required. However, the proposed Policy improperly allows the County to compare the actual monthly rent with an affordable monthly rental rate if a tenant fails to provide income information. This is not permissible under the Mello Act, as the Mello Act requires examination of tenant incomes, not rental rates. Moreover, it appears that the proposed Policy makes conclusions regarding the incomes of tenants living in units based upon monthly rental rates without giving consideration to the number of tenants living in a unit. This is problematic, as tenants may be "doubled-up" or overcrowded in a unit to afford the monthly rental rate. According to the County's Housing Element, the County had the second highest percentage of low income renters living in overcrowded or doubled-up housing conditions in 1995 (35%). This number has likely increased over the last 11 years. Looking only at monthly rental rates, therefore, without considering the number of tenants in a unit, does not provide sufficient information.

3. **Roommate Independence.** The proposed Policy requires roommates to be unrelated and financially independent of each other in order for their incomes to be assessed separately. This requirement is overly broad. For example, siblings who are financially independent of each other would be treated as a family unit under the Policy. The Policy is also overly broad in that it does not allow roommates to share a bank account or own real property together. Roommates may be financially independent, yet own property or share a bank account related to that property.

4. **Replacement Bedrooms.** Under the proposed Policy, a developer is allowed to replace low and moderate income *bedrooms*, on a one-for-one basis, as opposed to replacing low and moderate income *units* on a one-for-one basis. This contravenes the Mello Act, which provides: "[t]he conversion or demolition of existing residential *dwelling units* occupied by persons and families of low or moderate income . . . shall not be authorized unless provision has been made for the replacement of *those dwelling units*. . . . In the event that an existing residential *dwelling unit* is occupied by more than one person or family, the provisions of this subdivision shall apply *if at least one such person or family*, excluding dependents thereof, is of low or moderate income." Gov't Code Sec. 65590(b) (emphasis added). Accordingly, under the Mello Act, if one roommate is of low or moderate-income, the entire unit, including all bedrooms, should be replaced. (Similarly, developers should not be allowed to replace two 1-bedroom units with one 2-bedroom unit. It is unclear whether the proposed Policy would allow for this.)

5. **Duration of Affordability.** The proposed Policy requires affordable replacement units to be affordable for at least 30 years. Because the County renegotiates its ground leases during a relatively short time period, most affordable units in the Marina are therefore likely to disappear at the same time. The loss of such a great number of affordable units is likely to violate the County's Housing Element and its Regional Housing Needs Assessment (RHNA) requirements. Accordingly, we recommend that the County require affordable units to be maintained as affordable for the term of its ground leases.

6. **Like-for-Like Replacement.** The proposed Policy allows a developer to replace all existing affordable units (very low, low and moderate income units) with moderate income units. This is not supported by the Mello Act, which requires that replacement units be targeted to the same income level as the units lost to demolition or conversion. The Mello Act provides, "[t]he conversion or demolition of existing residential units occupied by persons and families of low or moderate income . . . shall not be authorized unless provision has been made for replacement of *those dwelling units* with units for persons and families of *low or moderate income*." Cal. Gov't Code Sec. 65590(b) (emphasis added). Accordingly, replacement units should be targeted to the income level of the tenants who resided in the units that were lost.

7. **Location.** The location requirement under the proposed Policy allows developers to provide replacement units either on-site or elsewhere within the coastal zone. It would be preferable for the County to require that replacement units be located on-site unless it is infeasible to do so.

It has come to our attention that some Marina developers have proposed to designate one or more sites in the Marina as locations for all affordable units that are required pursuant to the Mello Act. This proposal would violate the Mello Act. It also raises fair housing concerns, as this proposal would ghettoize and stigmatize the affordable units.

8. **Rehabilitation.** The proposed Policy allows off-site units to be either new construction or rehabilitation of existing units. The Mello Act, however, does not allow for rehabilitation of existing units, as rehabilitation does not create net, new units. The County, accordingly, may not allow for rehabilitation of units in its Policy. Rehabilitation, moreover, is not sound policy, as

rehabilitation is cheaper than new construction, thereby providing developers with an incentive to build off-site. According to the County's Housing Element, new construction may cost up to as much as eight times more than rehabilitation.

### **Inclusionary Housing**

9. **Feasibility Standard.** The Mello Act states, "[n]ew housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income." Cal Gov't Code Sec. 65590(d). This means that if it is feasible to provide housing for persons and families of low or moderate income at a new housing development in the coastal zone, such housing must be provided. In applying the Mello Act's inclusionary requirement the County must make a determination as to the number of affordable units that may feasibly be provided at such a project and then require that the project provide that number of affordable units.

Based on discussions with County Counsel, it appears that the County has adopted the position that "any feasible amount" of housing will satisfy the Mello Act's inclusionary obligation. Under this interpretation, if a 100 unit project could feasibly include 10 units of affordable housing, the County could require the developer to provide only 1 unit of affordable housing, because any number between 0 and 10 would be "feasible." This interpretation simply does not square with a plain reading of the statute, which again requires that if it is feasible to provide housing for persons and families of low or moderate income at a new housing development in the coastal zone, such units must be provided.

In addition to meeting Mello Act requirements, the County is also obligated to satisfy its obligations under the Housing Element of its General Plan. The County's Housing Element Goal 1 is to promote "(a) wide range of housing types in sufficient quantity to meet the needs of current and future residents, particularly persons and households with special needs, including but not limited to lower-income households, senior citizens, and the homeless." Goal 2 in the Housing Element is to promote "(a) housing supply that ranges broadly enough in price and rent to enable all households regardless of income, to secure adequate housing." The County is well behind in meeting these obligations. If the County appropriately requires Marina developers to comply with the Mello Act's inclusionary housing obligations, it will greatly assist the County in satisfying its Housing Element obligations to produce affordable housing.

10. **Method of Calculating Inclusionary Obligation.** Under the proposed Policy, the inclusionary housing unit calculation is based upon the net increase in the size of the new development. This method of calculation is not supported by the Mello Act. The Mello Act anticipates that developers will provide affordable inclusionary units based upon total development size. The Mello Act provides, "[n]ew housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income." Gov't Code Sec. 65590(d). The Mello Act does not support subtracting the number of existing units from the number of new units to calculate a developer's inclusionary obligation. Under the proposed Policy's method of calculating inclusionary units, developers

could circumvent their entire inclusionary housing obligation by simply constructing new developments the same size as existing developments.

11. **Reduced Inclusionary Requirement.** We know from our experience in the City of Los Angeles and the project developments we have worked on in the County that 10% on-site inclusionary units at very low-income is generally feasible, where very low-income is defined as 50% of area median income. The County's current Policy requires 10% inclusionary units at low-income, where low is defined as 60% of area median income. The County's proposed Policy is a huge step backward in terms of providing affordable inclusionary units, as it retreats from 10% at low defined as 60% of area median income, to 5% at very-low defined as 50% of area median income. The County, therefore, has cut in half the number of inclusionary units that must be provided and has lowered the income targeting by only 10%. Notably, the County has provided absolutely no reasoning or analysis whatsoever to explain its decision to cut in half Mello inclusionary obligations. When this reduced inclusionary requirement of only 5% is coupled with County's proposal to deduct the number of existing units from the number of newly created units, developer obligations to provide affordable housing in the coastal zone are entirely insufficient.

12. **Density Bonus Impact.** The proposed Policy allows a developer to calculate its inclusionary obligation based upon the pre-density bonus number of units in a development. This is impermissible under the Mello Act. If the County requires developers to include a percent of new units as inclusionary Mello units, density bonus units cannot be deducted from total development size before calculating the number of Mello inclusionary units. Mello units, accordingly, should be calculated based upon the post-density bonus size of a development.

13. **Artificial Regulation of Inclusionary Obligation.** The County's reductions in Mello inclusionary requirements, as discussed in numbers 9-12 above, simply act as an artificial regulation of the number of affordable units that a developer could feasibly provide under the Mello Act's inclusionary obligation. Pursuant to the County's artificial regulation of inclusionary units, a hypothetical 100 unit project, which could feasibly provide 10 units of affordable housing under the County's current Policy, will only have to provide 2.5 units under the proposed Policy (given a 5% inclusionary requirement, a 25% density bonus reduction and a 25% reduction based on 25 pre-existing units). An application of the County's proposed Policy, accordingly, is likely to yield projects that satisfy neither the Mello Act nor the County's RHNA allocation.

14. **Rehabilitation.** As with the replacement units, the proposed Policy allows developers to provide inclusionary units off-site through new construction or rehabilitation. As noted in the replacement discussion above, rehabilitation does not create net, new units, so it is impermissible under the Mello Act. Rehabilitation, moreover, is cheaper than new construction, so it gives developers an incentive to build affordable units off-site.

15. **Duration of Affordability.** The proposed Policy requires that affordable inclusionary units remain affordable for only 30 years. For the reasons stated above in the replacement discussion, affordable units should remain affordable for the duration of ground leases.

## Feasibility Analysis for Replacement and Inclusionary Housing Units

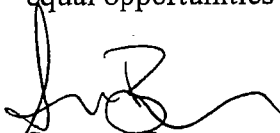
16. **Methodology, Threshold and Cap Rate.** The proposed Policy fails to provide adequate factors to determine feasibility. First, although reference is made to an estimate of the developer's return, the proposed Policy does not specify what methodology should be used to measure the return. Second, the proposed Policy fails to set forth a threshold level for the return along with a rationale explaining why this is the minimum level demanded in the market. Finally, although the proposed Policy allows for an adjustment of up to 200 basis points from the capitalization rate for apartment sales, the proposal provides no grounds for selecting any particular number between 0 and 200.

17. **Rent Adjustments.** Under the proposed Policy, rent adjustments for inclusionary units are subject to negotiation on a case-by-case basis with the County. The Policy, however, provides no details regarding such adjustments. The County should set forth its rent adjustment policy with sufficient detail in its proposed Policy.

### Additional Provision

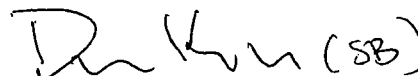
18. **Rental vs. Ownership Units.** The proposed Policy allows developers to satisfy their replacement and inclusionary Mello obligations by providing rental units, irrespective of whether the new development is comprised of rental units, ownership units or a mix of both types of units. This is problematic for a variety of reasons. First, it is cheaper for developers to build and subsidize rental units than ownership units. This creates an incentive for developers to build affordable rentals. If developers opt to build affordable rentals in a building with ownership units, developers should be required to provide additional affordable units as a result of the reduced cost.

Second, if affordable rentals are provided in a building with ownership units, the affordable units and the tenants residing in them are likely to be stigmatized. Third, the purpose of the Mello Act is to prevent gentrification of the coastal zone. It violates both the intent and spirit of the Mello Act for developers to provide cheaper and inferior units for low and moderate income households. Finally, low and moderate income households should be provided with equal opportunities to obtain ownership units in the coastal zone.



Susanne Browne  
Attorney at Law  
Legal Aid Foundation of Los Angeles

Sincerely,



Deanna R. Kitamura  
Attorney at Law  
Western Center on Law & Poverty

cc: Richard Weiss    Nicole Englund  
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Julie Moore



April 3, 2006

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**Re: Legality of Marina Del Rey Affordable Housing Policy**

Dear Honorable Supervisors, Commissioners and County Counsel:

The Legal Aid Foundation of Los Angeles (LAFLA) and Western Center on Law & Poverty (WCLP) submit this letter on behalf of People Organized for Westside Renewal (POWER) regarding the County's Marina del Rey Affordable Housing Policy and Policy Analysis (the "Policy"). On its face and as applied, the Policy violates the Mello Act's replacement and inclusionary housing provisions set out in Government Code §65590. In addition, the County's practice of segregating set-aside affordable units by age violates both the Mello Act and state and federal housing law. We have shared these concerns with County counsel and County staff and have been informed that the County plans to form a Mello policy task force and revise the Policy in the next six to twelve months. However, we are concerned that the County will approve developments and renegotiate ground leases in the interim prior to any change in the current illegal Policy and practices. Accordingly, we write to urge the County to cease any such project approvals and ground lease negotiations until its Policy is brought into compliance with the law.

April 3, 2006

Page 2

LAFLA, WCLP and POWER are intimately familiar with the Mello Act (Gov't Code § 65590). In 1993, WCLP and the Legal Aid Foundation of Long Beach (now part of LAFLA) filed a lawsuit against the City of Los Angeles, alleging that the City failed to comply with its affordable housing obligations under the Mello Act. (Venice Town Council, et al. v. City of Los Angeles, L.A. Super. Ct. No BC089678.) That suit resulted in a published opinion in our favor (47 Cal.App.4<sup>th</sup> 1547). The City of Los Angeles ultimately entered into a Settlement Agreement with LAFLA and WCLP in 2001 and adopted Interim Administrative Procedures for complying with the Mello Act, which currently govern the City's Mello Act compliance process.

In the last two years, LAFLA, WCLP and POWER have been actively involved in Mello Act cases in which developers have appealed the requirement to provide affordable units. In each instance, the outcome has been either on-site or off-site provision of affordable units. One case in particular involved a proposed 298 unit development in the Marina del Rey submarket. In that case, the developer (Trammell Crow Residential) agreed to include 24 on-site very low-income apartment units or 27 on-site very low-income condominium units, despite the fact that the developer had the additional expense of creating a \$5 million access road and did not take advantage of a density bonus or other incentives.

**I. The County Policy Fails to Meet Mello Act Requirements Regarding the Replacement of Affordable Units that are Converted or Demolished in the Coastal Zone.**

The Mello Act prohibits the authorization of conversion or demolition of existing residential units "occupied by persons and families of low or moderate income" unless provision has been made for the replacement of those dwelling units." Gov't Code 65590(b). The Mello Act provides, "[r]eplacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone. The replacement dwelling units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition of the residential dwelling unit." *Id.* Moreover, replacement units must be net, new units. See Venice Town Council, 47 Cal. App. 4th at 1553.

The County's Policy violates the Mello Act's replacement housing obligations in a number of ways. First, on its face, the Policy contains no provisions to ensure that these replacement obligations are followed. In order to satisfy state law, the County's must ensure that the developers build replacement units in compliance with the Mello Act.



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Second, the recent case of Del Rey Shores illustrates that the County's practice does not include a determination as to whether persons and families of low or moderate income reside in existing developments. The Regional Planning staff report regarding the project contains no discussion of the household income of current project residents. County planning staff testified at a January 25, 2006 Regional Planning Commission hearing regarding the project that the County had examined rent levels, but not tenant incomes at the project. Accordingly, it appears the County does not require developers or staff to examine existing tenant incomes when a developer proposes conversion or demolition of residential units. As a result, the County cannot meet its obligation under the Mello Act to require replacement units when units occupied by low or moderate income persons or families are proposed for demolition or conversion.

To comply with the Mello Act, the County should not approve demolition or conversion of any units currently located in the Marina without first determining whether any of these households are of low or moderate-income. If the County finds that units proposed for demolition or conversion are occupied by families of low or moderate income, the County should require developers to submit a plan for properly replacing those units before issuing any project approvals.

**II. The County Policy Violates the Mello Act by Allowing Developers to Pay In-lieu Fees for Inclusionary Units When It Is Feasible to Provide Affordable Units On or Off-site.**

The Mello Act provides: "New housing developments constructed within the coastal zone *shall*, where feasible, provide housing units for persons and families of low or moderate income . . . ." Gov't Code Sec. 65590(d) (emphasis added). Thus, if it is feasible for a developer to provide any inclusionary units, the developer must do so.

This provision of the statute does not have an exception permitting developers to pay a fee in-lieu of providing the affordable units. When the Legislature wanted to create an in-lieu exception, it knew how to do so.

The Mello Act specifically contemplates in-lieu fees for replacement units. Gov't Code § 65590(b) and (b)(4). However, the Mello Act contains no provision regarding in-lieu fees for inclusionary units. Accordingly, in-lieu fees may not be paid for inclusionary units under the Mello Act unless it is infeasible for a developer to provide any affordable units, either on or off-site.

The County Policy, by contrast, allows developers to pay in-lieu fees for inclusionary units when provision of some affordable units on or off-site is feasible.

In the event that on-site affordable units are infeasible, the Mello Act provides that "the local government *shall* require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof." The County's Policy fails to require an analysis of whether off-site provision is feasible and instead simply allows a developer to request an in-lieu fee. The County's Policy is additionally troublesome because the Policy does not require the County to spend the in-lieu fees within the coastal zone or within three miles of the coastal zone. The Policy allows the County to spend the Mello Act fees far outside the coastal zone in unincorporated areas of the County.

Thus, the County Policy violates the Mello Act by allowing in-lieu fees for inclusionary units where it is feasible for a developer to provide affordable units on or off-site and by failing to require an analysis of whether off-site provision of units is feasible when on-site provision is infeasible.

### **III. The County's In-lieu Fees Are Set At A Rate That Does Not Meet the Mello Act's Requirement to Create Net, New Units.**

#### **A. In-Lieu Fee for Replacement Units.**

As noted above, the Mello Act allows for in-lieu fees for replacement units. Assuming the County's currently existing in-lieu fee for inclusionary units also applies to replacement units, the County's fee is set far too low to comply with the Mello Act's requirement that the in-lieu fee "will result in the replacement of the number of dwelling units which would otherwise have been required . . . ." Gov't Code § 65590(b)(4).

The County's fee schedule is set far too low because the County has: (1) improperly based the fee on a per unit "gap"; (2) improperly estimated land costs outside of the coastal zone; and (3) adopted an inadequate index for annual adjustments

The County erred in calculating the benefits of its proposed in-lieu fee in combination with other funding sources. In-lieu fees in and of themselves should be sufficient to create an entire affordable unit as opposed to filling "the gap" not covered by other funding sources. A study commissioned by the City of Los Angeles regarding the Mello Act estimated that the total in-lieu fee subsidy required for a low-income unit in the coastal area at about \$215,000.<sup>1</sup> The County's Policy indicates that it reduced its in-lieu fee by assuming the existence of additional funding sources available for off-site developments. However, this assumption is flawed for two reasons. First, the Mello Act requires that replacement units be located on-site or within the coastal zone if feasible or, if this is not feasible, then within three miles of the coastal zone. Because the County does not have a program to build affordable units within the geographic area set out in

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<sup>1</sup> This figure is too low because the data on which it is based is outdated. Development and land costs have risen dramatically in the last few years.

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the Mello Act, the County cannot assume in-lieu fees will be used appropriately for replacement units. Second, the County's Policy states that state tax-exempt bond funding and state and federal tax credits are finite and that both programs are allocated on a competitive basis. Therefore, if the County or a non-profit developer obtains tax-exempt bond funding or tax credits, another affordable housing project that applied will not receive funding. The County's Policy of merely filling the gap thus leads to a reduction in the amount of affordable housing created.

As noted above, the Mello Act requires that replacement units be located on-site or elsewhere within the coastal zone if feasible. If not feasible, replacement units can be located within three miles of the coastal zone. The County's Policy regarding the in-lieu fee, however, ignores the Mello Act's preference that the replacement unit be located on-site or elsewhere within the coastal zone. Instead, the County adopted a 20% downward adjustment of land cost with the assumption that off-site units will be built within three miles of the coastal zone. This downward adjustment is not supported by the background information provided in Exhibit 2 of the County's Policy and violates the Mello Act's replacement provisions. Moreover, the County cannot assume any affordable units will be built within three miles of the coastal zone without verifying that land is available within that radius.

According to the County's Policy, the County calculated the fee for year 2002 and must adjust the fee in accordance with the Consumer Price Index (CPI) for this area. The CPI is an inadequate index with regard to construction and land costs. The County's consultant estimated a \$48 per square foot cost for 2002. However, we know from the City's consultant that total development cost for 2005 was more than twice the CPI increase. By linking the in-lieu fee to an inadequate index, the County further deflates an already inadequate fee.

#### **B. In-Lieu Fee Where No Inclusionary Units Are Feasible.**

As noted above, an in-lieu fee is not allowed unless a developer shows that it is infeasible to include even one affordable unit on or off-site. In the case that a developer shows that no affordable units are feasible on or off-site, the developer should pay an in-lieu fee comparable to the fraction of the unit that is feasible. For the reasons set out above, however, the County's existing in-lieu fee schedule is too low.

#### **IV. The County's Policy Relies on Flawed Methodology to Reach Erroneous Conclusions about the Feasibility of Mello Act Compliance.**

After careful review of the County's Policy, it is evident that the Policy should be revised using alternative methodologies and thresholds.

#### **A. Measuring Returns and Choosing Thresholds**

The County Policy measures feasibility of apartment projects using net operating income divided by total development cost (NOI/TDC). This measure provides only a partial picture of the developer's return—a picture of the current operating return. In fact, investors also rely in part on returns to be gained by the increasing value of their projects above the cost of developing them—value received whether at actual sale or as an asset onto which they hold. The conventional way of assessing return on an apartment development is to undertake a two step analysis:

- to value the structure as if it were being sold, based on its current income and the capitalization rate that reflects the market's assessment of the value of the income stream it will produce over time, or  
Value= NOI/Cap Rate
- to assess profitability in terms of that Value relative to the costs of development

The best mechanism for undertaking the second step is to evaluate Internal Rate of Return (IRR), in order to measure the return on what the developer actually invests (equity) as distinct from the construction loan. This is the methodology that was used by the Los Angeles Housing Department in its evaluation of Mello Act compliance at the Trammell Crow Residential development in the Marina del Rey submarket.

For any measure, the threshold level employed is key. The County's threshold level is far too high for the measure it uses, producing much higher return thresholds than we know developers are seeking. The County uses a 10% to 10.5+% threshold level for its NOI/TDC measure. Applying a reasonable capitalization rate of 0.07<sup>2</sup> and some algebra, the County's threshold level of 10% equals an Internal Rate of Return between 32% and 66% depending on whether it takes two or four years from investment to sale or valuation.<sup>3</sup> This is nearly two to nearly four times as high as the 18% level that is in the middle of the consensus range of 15% - 20% for the threshold for that measure.

#### **B. County Leasing Rates**

The County's Policy requires the County to consider a reduction in County rent of less than 53% where affordable units are proposed. The Policy states that the County would be making an economically indefensible decision if it were to allow a reduction of 53% or more. However, nothing scientific leads to this presumption. In fact, according to Exhibit 2 of the Policy, the County has accepted lower lease rates in the past. And we know from our experience

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<sup>2</sup> Capitalization rates in West Los Angeles, according to HR&A appendices and other sources, currently range from under 0.05 to 0.064.

<sup>3</sup> This assumes (1) two to four years from investment to sale or valuation and (2) construction financing for 70% of total development cost

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with the Del Rey Shores project that fairly small changes in the low-end leasing rate can make a project with on-site affordable units feasible. Because of the important goal of creating affordable units, the County should accept lease rates below 53% as it has done so for other projects.

### **C. Density Bonus**

The County's Policy properly identifies the state's density bonus law as a means to mitigate the cost of providing affordable units on-site. In the past two years, the state's density bonus law has been amended so that developers can more easily receive a density bonus. As the law now reads, developers are entitled to a density bonus when they reserve as little as 5% very low-income units in their projects. Gov't Code §65915. Although the County's Policy acknowledges the mitigating nature of a density bonus, it summarily concludes that construction costs would likely counter any benefit of adding the density bonus units. In essence, the County incorrectly presumes, in all cases, that a developer cannot take advantage of a density bonus. This presumption is improper, as developers must provide engineering reports to support such an allegation.

### **V. The County's Pattern and Practice of Discrimination Violate the Mello Act and Federal and State Law.**

The County's Policy expressly acknowledges that the intent of the Mello Act is to provide housing for all types of households and explains that the Policy's requirement of a broad unit mix is to effectuate the Mello Act's intent and to provide housing for a broad range of households types: ". . . one, two and three bedroom units will be made available as low-income housing, extending the benefits of affordable housing to families as well as to individuals and the senior segment of the population." (Policy, fn. 3, p. 5). However, based on our experience with the Capri project, we believe that the County has had an unwritten policy requiring that all affordable units in the Marina be restricted for seniors only. Such a practice violates the Mello Act, which requires that new housing developments in the coastal zone provide "housing units for persons *and families* of low or moderate income." (Gov't Code. § 65590) (emphasis added). Senior-only affordable housing does not satisfy this requirement.

Federal and State law prohibit discrimination based on age and familial status in buildings that do not meet the legal standards for senior housing. Title 24 CFR Sec. 100.305 and Title 24 CFR Sec. 100.303 define senior housing as buildings in which 80% of units in a building are reserved for individuals over age 55 or buildings in which 100% of the units in are reserved for individuals over age 62. Developments which reserve only 10% of units for individuals over age 62 do not qualify as senior housing under the federal standards. Accordingly, the County's practice violates the Mello Act and the laws prohibiting discrimination.

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## VI. Conclusion

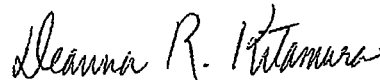
We appreciate that the County has recently recognized that legitimate issues have been raised regarding the legality of the County's Policy. We also appreciate that the County plans to undertake a review of its Policy. However, because the existing Policy does not comply with the Mello Act, the County should take the additional step of refraining from approving any further developments until such time as the County adopts a policy that is compliant with the Mello Act. Moreover, because ground lease terms affect a developer's ability to include affordable units, all ground lease negotiations should cease as well until such time as the County adopts a Policy that complies with the Mello Act.

Please advise us by April 24, 2006, whether the County will immediately agree to cease all development approvals and ground lease negotiations until it adopts a Policy that complies with the Mello Act. If the County does not agree to this, we will pursue legal remedies to ensure that the County does not continue to violate the law.

Sincerely,



Susanne Browne  
Attorney-at-Law  
Legal Aid Foundation of Los Angeles



Deanna R. Kitamura  
Attorney-at-Law  
Western Center on Law & Poverty

cc: Nicole Englund, Supervisor Gloria Molina's Office  
Rick Velasquez, Supervisor Don Knabe's Office  
Larry Hafetz, Office of the County Counsel  
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LATHAM & WATKINS LLP

October 20, 2006

Mr. Santos Kreimann  
Chief Administrative Office  
754 Hall of Administration  
500 W. Temple Street  
Los Angeles, CA 90012

Re: Proposed Mello Act Policy for County of Los Angeles

Dear Mr. Kreimann:

On behalf of Lyon Capital Ventures ("Lyon"), which is currently negotiating a term sheet with the County for the Villa Venetia project, we would like to take this opportunity to supplement our memos of May 25, 2006 and June 20, 2006 (attached) and our testimony at the August 1, 2006 Board of Supervisors hearing and September 7, 2006 Mello Act Policy Task Force workshop. We understand that you are in the process of identifying and evaluating potential revisions to the draft proposed Mello Act policy released by the Task Force earlier this year ("Draft Policy"), and we submit the following comments and observations for your consideration.

*The Marina is a Unique Economic and Coastal Resource, with Unique Challenges for Redevelopment.* The Marina generates substantial revenues for the County that are used for public benefit programs. The Marina is also a public recreational resource protected under the Coastal Act. It includes some of the most expensive and difficult to develop land within the County. Redevelopment is subject to a number of development regulations and constraints, both legal and political, and approvals can take several years to obtain. A Marina development project often involves many months of negotiations related to the term sheet, option, and lease agreements. In addition, multiple lease- and entitlements-related hearings can be required before such bodies as the Small Craft Harbor Commission, Design Control Review Board, Regional Planning Commission, Board of Supervisors and the California Coastal Commission. Even with comprehensive outreach efforts, community opposition is not uncommon. These factors push the limits of feasibility for redeveloping the Marina, even without taking into account affordable housing obligations.

*The City of Los Angeles Has Recognized that Creating New Rental Housing in the Coastal Zone is Categorically Infeasible.* Earlier this week, the City of Los Angeles released a draft ordinance to replace its outdated Interim Administrative Procedures for Implementing the Mello Act. (See attached Draft City Ordinance). The Draft City Ordinance recognizes that

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increasing construction costs and demand for ownership housing has contributed to the categorical infeasibility of creating new rental housing within the coastal zone:

“The consultant found that none of the apartment prototypes—large or small—were financially feasible in the base case. Since even 100 percent market-rate rental projects are infeasible, requiring them to provide affordable units or pay an in-lieu fee would make them even more infeasible than [sic] they already are. Basically, HR&A found that the very strong demand for ownership housing in the Coastal Zone has bid up the price of land beyond what the typical apartment developer can afford to pay. HR&A’s finding is consistent with recent data showing that most multi-family housing construction in the Coastal Zone is for ownership units, and that many developers initially pulling permits for apartments do so intending to sell them as condominiums.” (City of LA Staff Report, Proposed Mello Act Ordinance, October 2006, at 18).

*The County Should Consider Provisions Included in the City’s Proposed Draft City Ordinance, Which Allows In Lieu Fees and Off-Site Compliance “By Right”.* Based on a number of considerations, many of which also have been raised in the County record, the proposed Draft City Ordinance gives developers the option of providing the required units on-site, paying in lieu fees, or providing the required units off-site anywhere in the coastal zone or within three miles. We agree with the City of Los Angeles staff’s observations about these important tools for compliance:

*In lieu fees:* “in-lieu fees are particularly advantageous: they provide a reliable source of local funds that can be matched 3:1 to obtain state and federal affordable housing money.” (City of LA Staff Report, Proposed Mello Act Ordinance, October 2006, at 23).

*Off-site alternatives:* “since it is so difficult to anticipate where future development opportunities may arise, such flexibility is necessary to maximize the number of affordable units that can be provided under the Mello Act Ordinance. On the other hand, given the policy interest in ensuring that such units are not concentrated in one area, the proposed ordinance allows a more restrictive geographic standard to be imposed on a case-by-case basis.” (City of LA Staff Report, Proposed Mello Act Ordinance, October 2006, at 23).

Potential off-site alternatives under the City’s proposed ordinance include new construction, adaptive reuse of non-residential buildings, purchase and rehabilitation of existing residential buildings, and purchase of existing Market-rate residential units.



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The County's 2002 Mello Act policy recognized the challenges associated with development within the coastal zone, and created a program for developers to pay in lieu fees to create affordable housing. As we have noted before, such programs are used successfully in other jurisdictions. We continue to believe that such an alternative achieves the objectives of maximizing Marina revenues and creating certainty for developers, while still complying with the Mello Act. In lieu fees – coupled with a mechanism to ensure that the funding is used to build affordable housing – should be available. Similarly, we believe that off-site alternatives should be available. As indicated in previous correspondence, allowing for-profit developers to work with non-profit developers can result in *more* affordable housing units with on-site amenities that are geared towards residents, like playground equipment and computer rooms. These options, which may soon be available to City residents, should be available within the County as well.

*Social Factors Justify Allowing In Lieu Fees and Off-Site Compliance Options.*

The Mello Act allows the County to consider social factors in determining whether on-site compliance is feasible. Because of their potential to generate significantly more units, Lyon supports alternatives that allow for in lieu fees and off-site compliance.

*1. The County's Current Housing Crisis Requires Looking Beyond the Marina and the Mello Act to Meet Housing Needs.* The County needs to build more housing at all levels of affordability. According to SCAG and County data, nearly 30,000 housing units – including both affordable and market rate – are still needed within unincorporated County areas to meet housing needs generated between January 1998 and June 2005. During that 7½ year time period, just 936 new income-restricted affordable units were constructed, and less than 10% percent of the County's Regional Housing Needs Assessment fair share housing goals for affordable housing were met.

The County must look beyond the limited number of units within the coastal zone to solve the current housing crisis. Requiring all projects in the coastal zone to provide units on-site – where land costs are the highest and density is limited by the need to protect coastal resources – is among the least cost-effective options and will generate few units given the high cost per unit in comparison to other options. The County needs to consider alternatives that will maximize the number of affordable units. This includes off-site alternatives that can accommodate increased density along transportation corridors and job centers, and that can take advantage of lower land costs, reduced environmental constraints, and the ability to leverage private funds with tax credits and other financing incentives to maximize creation of affordable housing.

*2. The County's Mello Policy Should Avoid Creating Windfall Luxuries to Individuals Where the Same Funding Can Be Used to Create Housing for Many Others.* Dollar for dollar, more housing can be created outside of the Marina than can be created within it. Rather than subsidizing a percentage of otherwise costly units within a project in order to make them affordable to a few households, limited dollars are better spent on projects where land costs are lower or where funds can be leveraged with financing incentives, tax credits, and other funding sources. The County's interest in preserving and creating as much decent, affordable

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housing as possible outweighs any interest in providing high-end, luxury units to a fortunate handful of very low or low income households.

*Economic Factors Justify Allowing In Lieu Fees and Off-Site Compliance Options: The Unique Revenue Impacts to the County as Landowner Must be Considered.* The Marina is one of the County's most important assets. Maximizing revenues from this important source of unrestricted funding directly implements Goal 4 of the County's Strategic Plan (as updated in 2005), which is "Fiscal Responsibility: Strengthen the County's Fiscal Capacity." Because rents from the Marina are used to fund important County-wide programs, such as health and other social services that benefit low and moderate-income individuals and families throughout the County, maximizing revenues from the Marina also helps to implement other Strategic Plan goals, such as "Children and Families' Well-Being" (Goal 5), "Community Services" (Goal 6), "Health and Mental Health" (Goal 7), and "Public Safety" (Goal 8).

Reducing ground rents to subsidize on-site affordable units directly impacts this funding. The fiscal impacts of potential rent reductions, lower overall revenue and the County programs to be affected must be evaluated. We understand that the Del Rey Shores project, for example, may receive a rent concession of \$11.05 million to offset Mello Act affordable housing obligations and increases in construction costs as a result of project delays. Concessions such as these by the County can be avoided by allowing off-site compliance and in lieu fee payments.

*"Second Generation" Redevelopment at the Marina has Already Resulted in the Production of New Affordable Housing.* Affordable housing has been built and will continue to exist within the Marina even if developers are allowed to provide units off-site or pay in lieu fees. Recent County and/or Coastal Commission approvals for "Second Generation" residential projects in the Marina have resulted in conditions that will require the production of at least 179 affordable housing units within the Marina. These include the following:

- **10 low-income senior citizen units at the Capri Apartment on Marina Parcel 20 (units occupied).** (Represents 10% set aside for 99-unit apartment project);
- **18 on-site low-income senior citizen units at the Marina Harbors Apartments complex on Marina Parcel 111;** (15% set aside for 120-unit apartment project. The affordable units, though approved in relation to new 120-unit apartment building, were provided within an existing apartment building on the parcel);
- **82 on-site very low-income senior citizen units at the Esprit Apartments at Marina Parcels 12 and 15** (Phase 1 apartments on Parcel 12 now under construction);
- **15 on-site very low-income units (non-age restricted) at the Admiralty Apartments on Marina Parcel 140** (approved but yet to be constructed); and
- **17 very low-income units (non-age restricted) and at least 37 moderate income "replacement" units in The Shores project at Marina Parcels 100 & 101** (Represents a 5% inclusionary set aside based on the net new incremental units).

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As noted above, the City's rationale for exempting apartment projects from Mello Act requirements is that high demand within the Coastal Zone has bid up the price of land beyond what the typical apartment developer can afford to pay. Requiring on-site affordable housing in every instance will only discourage the future production of residential units, which in turn will only worsen the supply shortage and drive rents and prices higher. Compliance flexibility, on the other hand, will encourage the production of affordable housing.

Suggested "Options" for the Board of Supervisors to Consider and Evaluate. Based on the considerations outlined above and in the attached materials, we urge the County to consider a policy that includes the following components:

- *State / County Density Bonus Option.* Any project that qualifies for a density bonus under the state law or County ordinance should be deemed to have satisfied the Mello Act. The current minimum percentage requirements for new housing should be 5% very low and 10% low. In addition, for-sale projects should be allowed to comply by setting aside 10% moderate income units, and "senior citizen housing developments" as defined in the Civil Code should also qualify, consistent with the density bonus laws.
- *In Lieu Fees Option and Creation of Affordable Housing Trust Fund.* The County should reinstate the in lieu fee option and establish an "affordable housing trust fund" to ensure that any fees collected for the purpose of providing affordable housing are used to build affordable housing off-site. A list of eligible projects could be maintained to ensure that any funds are used to build housing.
- *Flexible Off-Site Options.* Like the City's proposed policy, the County should provide developers with the option to provide the required housing off-site, either elsewhere within the coastal zone or within three miles thereof. The proposed off-site alternative should allow rehabilitation of existing units, including existing affordable units where the developer extends the term of affordability, and projects by non-profit builders that need additional funding. Proposed off-site alternatives should be approved at the same time as the market-rate project to streamline the approval process for projects.
- *Exemption for Apartments.* In light of the City of Los Angeles' categorical conclusion that construction of new rental housing is infeasible and because the production of rental housing needs to be encouraged, the County should exempt for-rent units from mandatory Mello requirements.
- *Evaluation of Fiscal Impacts of All Alternatives.* As requested above, the County's environmental analysis of the proposed Draft Policy should include an economic assessment of the fiscal impacts on County programs that would result from rent concessions and lower overall rent revenues associated with requiring on-site affordable housing within the Marina.

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*The Suggested Options are In Keeping with the Purpose of the Mello Act, which was to Restore Local Control Over Housing Policy.* Prior to the Mello Act, the state Coastal Commission imposed affordable housing requirements on projects in the coastal zone. As a result, coastal cities and counties had little to no control over housing policy within a portion of their jurisdiction. The Mello Act was one of about 30 bills introduced to give control over housing policy back to local governments, so that jurisdictions could establish uniform housing policy. Today, the Mello Act still provides the County with a great deal of discretion and flexibility to set housing policy in the County coastal areas that supports such policy on a County-wide basis.

We believe that a policy based on the considerations listed above achieves the optimal balance between maximizing affordable housing production within or near the coastal zone, maximizing the revenues generated from the Marina, and protecting this important coastal resource.

*Clarification of Statements Made at September 7 Workshop*

*1. The County's Draft Policy is Not Proposing to Do Less than the City of Los Angeles' Interim Mello Policy Was Intended to Require.* During the September 7 workshop, representatives and members of POWER urged you to adopt the percentage requirements set forth in the City of Los Angeles' Interim Administrative Procedures for Implementing the Mello Act ("City's Interim Policy"). The City's Interim Policy requires new developments to set aside 10% of new units for very low income households and 20% of new units for low income households. The City's Interim Policy was adopted in 2000 in connection with the settlement of a 1993 lawsuit by Legal Aid Foundation of Los Angeles and the Western Center for Law and Poverty against the City. The Interim Policy was "always intended as a stop-gap measure to give the City the time it needed to develop a permanent Mello Act regulation," and was never intended to survive as long as it has. (City of LA Staff Report, Proposed Mello Act Ordinance, October 2006, at 10).

Importantly, the percentages established in 2000 by the City's Interim Policy reflected the state density bonus law that was effective in 2000 (but has since been amended), which required 20% low income or 10% very low income set-asides in order to qualify for a bonus density under state law. Thus, the City's Interim Policy mirrored the state law percentages in selecting minimum thresholds, thereby allowing the City to apply the same affordable housing density bonus policy both inside and outside the coastal zone. The state law was amended in 2004 to lower the minimum percentage requirements, in recognition of the tremendous increase in housing production costs. The minimum required set-asides were reduced from 20% to 10% for low income units and from 10% to 5% for very low income units. The Interim Policy adopted in 2000 was never amended, because a permanent replacement ordinance was expected soon.

Just as the City's Interim Policy originally tracked state density bonus law, so does the County's proposal to require 5% very low income units. In July 2006, the County adopted an ordinance to implement the state density bonus law, thus the percentage goals proposed in the Draft Policy are also consistent with County-wide housing policy. Consistent with the original

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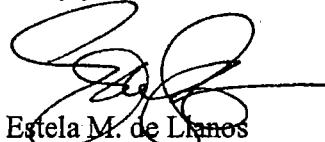
intent of the City's Interim Policy, we have suggested that the County's Mello Policy should allow any project that qualifies for a density bonus to be deemed to have satisfied its Mello Act requirement.

2. Replacement Units Do Not Have to be "Like-for-Like" Under the Mello Act or Under the City's Interim Policy. During the September 7 workshop, POWER also argued that the proposed policy of allowing replacement units to fall into a different income category or feature a different number of bedrooms than the units that were being replaced was not permitted under the Mello Act and was inconsistent with the City's Interim Policy. This is not true. The Mello Act states that the conversion or demolition of existing affordable units is not permitted unless "provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income." (Government Code section 65590(b)(emphasis added)). There is no requirement that the replacement units be "like-for-like" in any respect. Similarly, Section 7.2.1 of the City's Interim Policy states:

Affordable Replacement Units may be provided at any level of affordability. For example, an Affordable Existing Residential Unit occupied by a Very Low Income Household may be replaced with an Affordable Replacement Unit affordable to a Moderate Income Household. The Council may change this policy when the Interim Ordinance is adopted and require "like for like" replacement. (City's Interim Policy, at 21).

We appreciate your careful consideration of this information and would be pleased to provide any additional information you may require or that is appropriate to address any questions you may have. We commend the Task Force on its hard work and look forward to working with you to identify ways of maximizing housing production in the County.

Truly yours,



Estela M. de Llanos  
of LATHAM & WATKINS LLP

Enclosures

cc: Honorable Supervisors  
Julie Moore  
Larry Hafetz  
Tom Faughnan  
Mark Kelly  
Cindy Starrett

**APPENDIX A**

**DISCUSSION DRAFT ORDINANCE**

## APPENDIX A

### **PROPOSED ORDINANCE FOR DISCUSSION**

An ordinance adding a new Section 12.20.2.2 and a new Section 19.14 to the Los Angeles Municipal Code establishing regulations to protect and increase the supply of housing affordable to households with Very Low, Low, or Moderate Incomes in the Coastal Zone; and amending Chapter 128 of Division 5 of the Los Angeles Administrative Code concerning the Coastal Zone Affordable Housing Trust Fund and establishing a new Mello Act Ordinance Appeals Trust Fund.

### **THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:**

**Section 1.** A new Section 12.20.2.2 is hereby added to Article 2 of Chapter 1 of the Los Angeles Municipal Code to read:

**A. Purpose.** In accordance with California Government Code Section 65590 (k), the purpose of this section is to establish regulations to protect and increase the supply of housing affordable to households with Very Low, Low, or Moderate Incomes in the Coastal Zone. These regulations shall be known as the "Mello Act Ordinance."

**B. Definitions.** Notwithstanding any provisions of this chapter to the contrary, the following definitions shall apply to this ordinance:

**Administrative Procedures** means the procedures adopted by resolution of the Council to administer and enforce this ordinance.

**Affordable Existing Residential Unit** means an existing Residential Unit occupied by a household with a Very Low, Low, or Moderate Income, as determined by the Los Angeles Housing Department (LAHD).

**Affordable Housing Incentives Guidelines** refers to the definition of "Affordable Housing Incentives Guidelines" in Section 12.22 A 25 (b) of this Code.

**Affordable Housing Provision Plan** is a document that shows how Affordable Replacement Units or Inclusionary Residential Units will be provided in accordance with this ordinance, the Administrative Procedures, and the Affordable Housing Incentives Guidelines.

**Affordable Replacement Unit** means a Residential Unit that has the same number of bedrooms as the Affordable Existing Residential Unit that was removed or converted, and is also a "Restricted Affordable Unit" as defined in Section 12.22 A 25 (b) of this Code.

**Coastal Zone** means the Coastal Zone, as defined in California Public Resources Code, Division 20 (commencing with Section 30000), including, but not limited to, the Coastal Zone portions of Venice, San Pedro, Pacific Palisades, Playa Vista, Wilmington, Fort MacArthur/White Point, Palms/Marina Freeway Area, and Del Ray Lagoon, as depicted on the City of Los Angeles Coastal Zone maps, as prepared and maintained by the Department of City Planning. In the case of any discrepancy, the Public Resources Code shall govern.

**Coastal Zone Affordable Housing Trust Fund** is the reserve account described in Chapter 128, Division 5 of the Los Angeles Administrative Code.

**Extended Coastal Zone** means that area within the City of Los Angeles within three miles of the inland boundary of the Coastal Zone.

**Inclusionary Residential Unit** means a Residential Unit that is also a "Restricted Affordable Unit," as defined in Section 12.22 A 25 (b) of this Code, but is not an Affordable Replacement Unit.

**Income, Very Low, Low, or Moderate** refers to the annual income of a household, as defined in Sections 50079.5, 50093, 50105, and 50106 of the California Health and Safety Code.

**Local Coastal Program** refers to the definition of "Local Coastal Program" in Section 12.20.2 B of this Code.

**Mello Act Project Permit Compliance** shall mean a decision by the assigned decision-maker that a Project complies with the regulations set forth in Section 12.20.2.2 E of this Code, either as submitted or with conditions imposed to achieve compliance.

**Pacific Palisades Subarea** means that area of the City of Los Angeles depicted as subarea one on the Coastal Zone map attached to the Administrative Procedures.

**Project** means any action requiring a building permit approved by LADBS or a discretionary land use approval approved by a decision-maker that:

(1) removes one or more existing Residential Units through a change to a non-residential use—**Change of Use**;

(2) converts one or more existing Residential Units to a condominium, cooperative, or similar form of ownership—**Condominium Conversion**;



(3) removes one or more existing Residential Units through the complete or partial demolition of a building, or by combining two or more units to make a larger unit—**Demolition**; or

(4) creates one or more new Residential Units for rent or for sale, either through new construction or the adaptive reuse of existing, non-residential structures—**New Housing**.

**Project Applicant** means the person, partnership, corporation, governmental organization or other entity filing an application for a Project with either LADBS or LADCP.

**Rental Housing Production Fees** means the fees set forth in Section 12.95.2 K of this Code.

**Residential Unit** means a dwelling unit, efficiency dwelling unit, light housekeeping room, or joint living and work quarters, as defined in Section 12.03 of this Code; a mobile home, as defined in California Health and Safety Code Section 18008; a mobile home lot in a mobile home park, as defined in California Health and Safety Code Section 18214; or a guest room or efficiency unit in a residential hotel, as defined in California Health and Safety Code Section 50519 (b)(1).

**San Pedro-Harbor Subarea** means that area of the City of Los Angeles depicted as subarea three on the Coastal Zone map attached to the Administrative Procedures.

**Venice-Playa Del Rey Subarea** means that area of the City of Los Angeles depicted as subarea two on the Coastal Zone map attached to the Administrative Procedures.

**C. Relationship to Existing Regulations.** The relationship between this ordinance and other regulations that also apply to the Coastal Zone is set forth below:

1. Every Project in the Coastal Zone must receive the proper review pursuant to this ordinance regardless if the Project is regulated by any geographically specific plan or Local Coastal Program. This requirement also applies to any Project exempted from the requirement to obtain a coastal development permit.

2. In the case of conflict between this ordinance, any geographically specific plan, Local Coastal Program, or any other regulation, the requirement that results in the largest number of Affordable Replacement Units or Inclusionary Residential Units shall apply.

3. This ordinance shall not abrogate any existing development agreement between a property owner and the City of Los Angeles executed prior to this ordinance's effective date.

4. This ordinance and the Administrative Procedures shall replace and supercede the interim administrative procedures that are attached as Exhibit A to the settlement agreement that took effect on January 3, 2001, in the matter of *Venice Town Council, et al., vs. City of Los Angeles*, BC089678.

**D. Administrative Procedures.** City decision-makers, departments, staff, employees, agents, officers, commissions and appellate bodies must administer and enforce this ordinance in accordance with the Administrative Procedures.

**E. Regulations.**

**1. Affordable Existing Residential Units.** LAHD shall have up to 60 days from the date of referral by LADCP to determine if any existing Residential Units in a Change of Use, Condominium Conversion or Demolition Project are Affordable Existing Residential Units. This time limit may be extended as mutually agreed upon in writing by LADCP and LAHD. In the event that an existing Residential Unit is occupied by more than one person or family, and if at least one such person or family (excluding dependents) is of Very Low, Low, or Moderate Income, then the existing Residential Unit shall be considered to be an Affordable Existing Residential Unit.

**Exemptions:** No Residential Unit shall be considered to be an Affordable Existing Residential Unit if it: (1) was completely and continuously unoccupied for more than one year immediately prior to the filing of an application for a Change of Use, Condominium Conversion or Demolition Project; (2) is occupied by its owner or owners at the time the application for a Change of Use, Condominium Conversion or Demolition Project is filed, except for a mobile home, as defined in California Health and Safety Code Section 18008; or a mobile home lot in a mobile home park, as defined in California Health and Safety Code Section 18214; or (3) is in a building a governmental agency has declared a public nuisance pursuant to Division 13 (commencing with Section 17000) of the California Health and Safety Code; Chapter IX, Article 1, Division 89 of this Code; or any subsequent provision of this Code adopted pursuant to Division 13 of the California Health and Safety Code.

**2. Affordable Replacement Units.** All Affordable Existing Residential Units that are removed or converted must be replaced one-for-one with Affordable Replacement Units or an in-lieu fee is paid.

**(a) In-Lieu Fees.** Project Applicants may pay the following fees in lieu of directly providing required Affordable Replacement Units:

Subarea	Fee
Pacific Palisades	A fee of \$220,061 must be paid for each required Affordable Replacement Unit.
Venice-Playa Del Rey	A fee of \$209,075 must be paid for each required Affordable Replacement Unit.
San Pedro-Harbor	A fee of \$178,835 must be paid for each required Affordable Replacement Unit.

**(b) Affordability Level.** An Affordable Replacement Unit must be offered at the same level of affordability as the Affordable Existing Residential Unit that was removed or converted.

**(c) Right of First Refusal.** The last household to occupy a removed or converted Affordable Existing Residential Unit shall have a right of first refusal to occupy an Affordable Replacement Unit when it becomes available for occupancy, but must have a qualifying income, as determined by LAHD.

**(d) Legal Status.** An Affordable Existing Residential Unit shall be subject to the provisions of this subdivision regardless if it was legally permitted or not.

**3. Inclusionary Residential Units.** All New Housing and Condominium Conversion Projects consisting of five or more Residential Units for sale must either provide Inclusionary Residential Units or pay an in-lieu fee.

**Exemption:** The requirements set forth in this subdivision shall not apply to additional market-rate Residential Units included in a New Housing Project pursuant to a density bonus, as set forth in Section 12.22 A 25 of this Code.

**(a) Requirements.** This ordinance's requirements concerning Inclusionary Residential Units are set forth in the following chart:

Subarea	Project Size	
	5-9 units	10 or more units
Pacific Palisades	The Project Applicant must pay an in-lieu fee of \$8,824 for every market-rate Residential Unit in the Project.	The Project Applicant must provide Inclusionary Residential Units affordable to Very Low Income Households equal to at least ten percent of all Residential Units in the Project or pay an in-lieu fee of \$22,006 for every market-rate Residential Unit in the Project.
Venice-Playa Del Rey	The Project Applicant must pay an in-lieu fee of \$8,383 for every market-rate Residential Unit in the Project.	The Project Applicant must provide Inclusionary Residential Units affordable to Very Low Income Households equal to at least ten percent of all Residential Units in the Project or pay an in-lieu fee of \$20,907 for every market-rate Residential Unit in the Project.
San Pedro-Harbor	The Project Applicant must pay an in-lieu fee of \$7,170 for every market-rate Residential Unit in the Project.	The Project Applicant must provide Inclusionary Residential Units affordable to Very Low Income Households equal to at least ten percent of all Residential Units in the Project or pay an in-lieu fee of \$17,883 for every market-rate Residential Unit in the Project.

**(b) Project Size Adjustment.** Any required Affordable Replacement Units shall first be subtracted from total Project size before applying the requirements set forth in Section 12.20.2.2 E 3 of this Code.

**(c) Fractions.** The number of Inclusionary Residential Units required pursuant to Section 12.20.2.2 E 3 of this Code shall be rounded upwards from fractions of one-half ( $\frac{1}{2}$ ) and more to result in one more required Inclusionary Residential Unit; and rounded downwards from fractions of less than one-half ( $\frac{1}{2}$ ) to result in one less required Inclusionary Residential Unit.

**4. Additional Regulations.** The following additional regulations shall apply to the provision of Affordable Replacement Units and Inclusionary Residential Units.

**(a) Tenure.** Affordable Replacement Units or Inclusionary Residential Units may be either rented, leased, or sold.

**(b) Location.** Project Applicants may locate Affordable Replacement Units or Inclusionary Residential Units anywhere in the Coastal Zone or the Extended Coastal Zone. Notwithstanding, the assigned decision-maker or appellate body, in consultation with LAHD, may require that the units be located in a defined geographic area within the Coastal Zone or Extended Coastal Zone.

**(c) Availability for Occupancy.** Affordable Replacement Units must be available for occupancy within three years of the date that work commenced on the Change of Use, Condominium Conversion or Demolition Project. Inclusionary Residential Units must be available for occupancy as follows:

(1) if provided on-site by the Project Applicant, at the same time as the market-rate Residential Units are available for occupancy;

(2) if provided off-site by the Project Applicant, within three years of the date LAHD approves the Affordable Housing Provision Plan; or

(3) if provided by a Coastal Zone Affordable Housing Trust Fund provider, within three years of the date a contract is executed between LAHD and the provider.

**(d) Approved Provision Methods.** Subject to LAHD's review and approval, Affordable Replacement Units or Inclusionary Residential Units may be provided through either:

(1) new construction from the ground up;

(2) the adaptive reuse of existing non-residential buildings;

(3) the purchase and rehabilitation of vacant residential buildings;

or

(4) the purchase of existing market-rate Residential Units, including units under construction.

**(e) Affordable Housing Incentives Guidelines.** Affordable Replacement Units and Inclusionary Residential Units must be provided in accordance with the Affordable Housing Incentives Guidelines, as applicable.

**(f) Affordable Housing Provision Plan.** Project Applicants that will directly provide required Affordable Replacement Units or Inclusionary Residential Units must prepare an Affordable Housing Provision Plan for LAHD's review and approval.

**(g) Affordability Covenant and Agreement.** LAHD shall develop and the Project Applicant shall record a covenant and agreement guaranteeing that required Affordable Replacement Units and Inclusionary Residential Units shall remain affordable for at least 55 years from the date the covenant and agreement is recorded. Tenants, rental applicants, purchasers and prospective purchasers of the Affordable Replacement Units or the Inclusionary Residential Units shall have the right to seek an injunction to enforce the affordability criteria, or to raise the affordability criteria as a defense or counterclaim to a claim for rent or possession directly against the owner, manager, and/or their successors in interest, of those units.

**(h) Registration and Occupancy Monitoring.** All Affordable Replacement Units and Inclusionary Residential Units provided pursuant to this ordinance must be registered with LAHD. LAHD shall annually monitor each Affordable Replacement Unit and Inclusionary Residential Unit to ensure that it remains affordable to and occupied by a Very Low, Low, or Moderate Income Household. All registration and occupancy monitoring fees as set forth in Section 19.14 G of this Code must be paid.

**F. Coastal Zone Affordable Housing Trust Fund.** Pursuant to Chapter 128, Division 5 of the Los Angeles Administrative Code, LAHD shall administer the Coastal Zone Affordable Housing Trust Fund.

1. LADBS shall collect and deposit in-lieu fees into the Coastal Zone Affordable Housing Trust Fund.

2. If a Project Applicant elects to pay in-lieu fees, then they must be paid in full prior to LADBS's issuance of any permits. Alternatively, Project Applicants may post a performance bond, acceptable to LAHD, that guarantees full payment of the in-lieu fees within one year of LADBS's issuance of any permits.

3. If in-lieu fees, Rental Housing Production Fees, or any other similar affordable housing fees all apply to a project, then the greatest of these fees shall apply. Any fees collected shall first be deposited into the Coastal Zone Affordable Housing Trust Fund. Then, to the extent that there are fees above and beyond those required for deposit into the Coastal Zone Affordable Housing Trust Fund, those additional fees shall be deposited into the Rental Housing Production Fund or similar applicable affordable housing trust fund or reserve account.

4. In-lieu fees may be used to finance the development of Affordable Replacement Units or Inclusionary Residential Units anywhere in the Coastal Zone or the Extended Coastal Zone, subject to Council policy. These fees may not be used to cover the City's costs related to administering the Coastal Zone Affordable Housing Trust Fund or this ordinance.

5. Every year LAHD shall adjust the in-lieu fees set forth in this ordinance to account for the annual change in construction and land costs in the Coastal Zone and Extended Coastal Zone. The City Council shall adopt the adjusted in-lieu fees by resolution.

**G. Mello Act Project Permit Compliance.** A Mello Act Project Permit Compliance is required if the Project is a New Housing or a Condominium Conversion Project consisting of five or more Residential Units for sale, or Affordable Existing Residential Units will be removed or converted.

**1. Notice of Exemption.** If a Project does not require a Mello Act Project Permit Compliance then the Project Applicant shall be issued a notice of exemption.

**2. Application.** To apply for a required Mello Act Project Permit Compliance, the Project Applicant must file an application at a public office of the LADCP, on a form provided by the Department, and include all information as required by the Administrative Procedures. In addition, the Project Applicant must pay the applicable administrative fee set forth in Section 19.14 D of this Code.

**3. Authority.** The assigned decision-maker shall have the authority to approve, approve with conditions, or deny an application for a Mello Act Project Permit Compliance.

**4. Finding.** In order to grant a Mello Act Project Permit Compliance the assigned decision-maker must find that the Project, either as submitted or conditioned, complies with the regulations set forth in Section 12.20.2.2 E of this Code.

**5. Limitation.** The granting of a Mello Act Project Permit Compliance shall not imply compliance with any other provisions of this Code.

**6. Expiration Period.** A Mello Act Project Permit Compliance shall become null and void if not utilized within two years of its effective date. For purposes of this subdivision, "utilized" shall mean that work on the Project has begun and been carried on diligently without substantial suspension or abandonment. The assigned decision-maker may extend the expiration period pursuant to an application filed by the Project Applicant at any public office of the LADCP, accompanied by payment of a fee equal to that specified in Section 19.01 M of this Code. The application must be filed prior to the expiration date, and set forth the reasons why an extension of time is needed. If good and reasonable cause exists then the assigned decision-maker may extend the expiration period by up to one year.

**7. Procedures.** If a Project requires both a Mello Act Project Permit Compliance and one or more other discretionary land use approvals, then the procedures set forth in Section 12.36 of this Code concerning multiple approvals shall govern. If a Project

only requires a Mello Act Project Permit Compliance and no other discretionary land use approvals, then the assigned decision-maker is the Director of Planning and the procedures set forth below shall govern:

**(a) Optional Public Informational Meeting.** The Director may hold a public informational meeting concerning an application for a Mello Act Project Permit Compliance if the Director decides that doing so would be in the public interest. In that event, notice of the meeting shall be provided following the procedures set forth in Section 12.20.2.2 H 3 (b) of this Code.

**(b) Time Limit and Failure to Act-Transfer of Jurisdiction.** The Director shall make a decision approving, approving with conditions or denying an application for a Mello Act Project Permit Compliance within 75 days after the date the application is deemed complete. This time limit may be extended as mutually agreed upon in writing by the Project Applicant and the Director. If the Director fails to act within this time limit then the transfer of jurisdiction procedures set forth in Section 11.5.7 C 5 of this Code shall govern.

**H. Appeals.** The Project Applicant or any other person aggrieved by the decision-maker's decision may appeal the Mello Act Project Permit Compliance to the designated appellate body. The appellate body may, by resolution, reverse or modify, in whole or in part, the Mello Act Project Permit Compliance, so long as it finds that its decision is consistent with the Mello Act. The appellate body's decision shall be final and effective as provided in Charter Section 245.

**1. Decision.** The appellate body shall make its decision, based on the record, as to whether the decision-maker erred or abused its discretion. Appellants shall have the burden of proof, and shall present substantial evidence and specific facts to support their appeal. Appellants must set forth specifically the points at issue and the reasons for the appeal. If a violation of federal or state law or of the federal or state constitutions is claimed, then the appeal shall set forth the basis upon which the appellant makes this claim.

**2. Economically Viable Use.** If the basis for the appeal is a claim that application of the regulations set forth in the Mello Act Ordinance constitutes an unconstitutional taking that denies the appellant economically viable use of the subject property then the appellate body may require the appellant to pay the fees set forth in Section 19.14 F of this Code to compensate a qualified and independent consultant, selected and retained by LAHD, to prepare a report evaluating the merits of this claim. Pursuant to Section 5.528.1 of the Los Angeles Administrative Code, LAHD shall collect and deposit these fees into the Mello Act Ordinance Appeals Trust Fund. The consultant's report shall be submitted to the appellate body within 60 days of the



appellate's body request, or within an extended period as mutually agreed upon in writing by the appellate body and LAHD.

**3. Procedures.** If a Project requires both a Mello Act Project Permit Compliance and one or more other discretionary land use approvals, then the procedures set forth in Section 12.36 of this Code concerning multiple approvals shall govern. If a Project only requires a Mello Act Project Permit Compliance and no other discretionary land use approvals, then the appellate body is the Area Planning Commission and the procedures set forth below shall govern:

**(a) Filing of an Appeal.** An appeal must be filed within 15 days of the date of mailing of the Director of Planning's Mello Act Project Permit Compliance on forms provided by LADCP. The Mello Act Project Permit Compliance becomes final and effective upon the close of the 15-day appeal period if not appealed, or as provided below if appealed.

The Commission shall not consider any appeal not filed within the 15-day appeal period. The filing of an appeal stays proceedings in the matter until the Commission has made a decision. Once an appeal is filed, the Director shall transmit the appeal and the file to the Commission, together with any reports that may have been prepared responding to the allegations made in the appeal.

**(b) Public Hearing.** Before acting on any appeal, the Commission shall set the matter for public hearing, at which evidence shall be taken. The Commission may conduct the hearing itself, or may designate a hearing officer to conduct the hearing. The Commission shall give notice in all of the following manners:

**(1)** By at least one publication in a newspaper of general circulation in the City of Los Angeles, designated for that purpose by the City Clerk, no less than 24 days prior to the date of the hearing; and

**(2)** By mailing a written notice no less than 24 days prior to the date of the hearing to the parties specified in Section 12.20.2.2 I of this Code.

**(c) Time for Appellate Decision.** The Commission shall act within 75 days after the expiration of the appeal period, or within any additional period that the Project Applicant and the Commission both agree to in writing. The Commission's failure to adopt a resolution within this time period shall be deemed a denial of the appeal.

**I. Notice.** A copy of the notice of exemption, Mello Act Project Permit Compliance, notice of the optional public informational meeting, notice of appellate body public hearing, and appeal decision shall be mailed to: the Project Applicant; to the owner of the subject property, if other than the Project Applicant; to all occupants of buildings in a Change of Use, Condominium Conversion or Demolition Project; to the owners of all

properties abutting, across the street or alley from, or having a common corner with the subject property; to all persons who have filed written requests for notice with LADCP; the applicable Council office; LADBS; LAHD; the Department of Neighborhood Empowerment; and to all persons as required by the Administrative Procedures.

**J. Annual Report.** Every year after the effective date of this ordinance LAHD shall compile, with the assistance of LADBS and LADCP, a report that covers the period from July 1 through June 30 of the prior year.

**K. Severability.** If any provisions of this ordinance are found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance, which can be implemented without the invalid provision, and to this end the provisions of this ordinance are declared to be severable.

**Sec. 2.** Chapter 128 of Division 5 of the Los Angeles Administrative Code is hereby amended to read:

**CHAPTER 128**  
**COASTAL ZONE AFFORDABLE HOUSING TRUST FUND SPECIAL FUNDS**

**Section 5.528. Coastal Zone Affordable Housing Trust Fund.**

**A. Creation and Administration of Fund.** This ordinance creates within the Treasury of the City of Los Angeles a special fund known as the Coastal Zone Affordable Housing Trust Fund, ~~referred to in this chapter as the Fund.~~ (the "Fund") The Los Angeles Housing Department (LAHD) shall administer, have overall management of and expend funds from the Fund in accordance with the provisions of this ordinance. LAHD shall also administer the Fund in accordance with established City practice and in conformity with Government Code Section 66000, *et seq.* All interest or other earnings from money received into the Fund shall be credited to the Fund and devoted to the purposes listed in this chapter.

**B. Purpose.** The Fund shall be used for the deposit of money paid to the City of Los Angeles pursuant to the Mello Act Ordinance and any other money appropriated or given to this Fund for affordable housing in the Coastal Zone, or within three miles of the inland boundary of the Coastal Zone.

**C. Expenditures.** Except as set forth below, funds collected pursuant to the Mello Act Ordinance and any other monies placed in this Fund shall be expended only for the purpose of developing affordable housing in the Coastal Zone, or within three miles of the inland boundary of the Coastal Zone.

LAHD is authorized to make expenditures from ~~this~~ the Fund in accordance with the Mello Act Ordinance. Administration of the Fund and expenditures from the Fund shall also be in compliance with the requirements in Government Code Section 66000, *et seq.*, including the following:

1. The City Departments shall deposit all monies received pursuant to the Mello Act Ordinance in the Fund and avoid any commingling of the monies with other City revenues and funds, except for temporary investments, and expend those monies solely for the purpose for which the in-lieu fee was collected. Any interest income earned by monies in the Fund shall also be deposited in that Fund and shall be expended only for the purpose for which the in-lieu fee was originally collected.
2. LAHD shall, within 180 days after the last day of each fiscal year, make available to the public all the information required by Government Code Section 66006 (a).
3. The City Council shall review the information made available to the public pursuant to Paragraph 2 within the time required by Section 66006, and give notice of that meeting as required by that Section.
4. When required to do so by Government Code Section 66001 (e) and (f), the City Council shall authorize refunds of fees paid to the Fund. Funds shall be used for the purposes set forth in Subsection B. Should any project become infeasible for any reason determined by the City Council or there are project savings, the City Council may reprogram the applicable funds so long as the funds are used for the purposes set forth above.

Regulations to administer these funds shall be promulgated by LAHD.

**D. Reporting.** LAHD shall report annually to the City Council and Mayor identifying and describing in detail receipts and expenditures of the Fund. LAHD shall submit each annual report within 60 days after the close of the fiscal year covered in the report.

#### **Section 5.528.1. Mello Act Ordinance Appeals Trust Fund.**

**A. Creation and Administration of Fund.** This ordinance creates within the Treasury of the City of Los Angeles a special fund known as the Mello Act Ordinance Appeals Trust Fund (the "Fund"). The Los Angeles Housing Department (LAHD) shall administer, have overall management of, and expend fund from the Fund in accordance with the provisions of this ordinance. LAHD shall administer the Fund in accordance with established City practice. All interest or other earnings from money received into the Fund shall be credited to the Fund and devoted to the purposes listed in this ordinance.

**B. Expenditures.** Pursuant to Section 12.20.2.2 H 2 of the Los Angeles Municipal Code, the Fund shall be used to cover LAHD's cost to compensate consultants to evaluate the merits of Mello Act Project Permit Compliance appeals when the basis for the appeal is a claim that application of the regulations set forth in the Mello Act Ordinance constitutes an unconstitutional taking that denies the Appellant economically viable use of the subject property

**C. Procedures.** LAHD is authorized to establish appropriate procedures to carry out this ordinance.

**Sec. 3.** A new Section 19.14 is hereby added to Article 9 of Chapter 1 of the Los Angeles Municipal Code to read:

**MELLO ACT ORDINANCE ADMINISTRATIVE FEES.** In addition to all other fees payable to the City of Los Angeles, the following administrative fees must be paid in connection with Section 12.20.2.2 of this Code, otherwise known as the "Mello Act Ordinance."

**A.** A fee of \$240.00 shall be charged and collected by the Los Angeles Housing Department (LAHD) when the affordability status of an existing Residential Unit is determined, and \$300.00 when redetermined, pursuant to Section 12.20.2.2 E 1 of this Code.

**B.** If an in-lieu fee pursuant to Section 12.20.2.2 E of this Code is paid, then a surcharge equal to five percent of the total amount of the in-lieu fee shall be charged and collected by LAHD.

**C.** A fee of \$500.00 shall be charged and collected by LAHD when an Affordable Housing Provision Plan prepared by a Project Applicant is reviewed, pursuant to Section 12.20.2.2 E 4 of this Code.

**D.** Pursuant to Section 12.20.2.2 G of this Code, the Los Angeles Department of City Planning (LADCP) shall charge and collect:

**1.** A fee of \$232.00 when applications for a Mello Act Project Permit Compliance and a discretionary land use approval are concurrently filed; or

**2.** A fee of \$860.00 when only an application for a Mello Act Project Permit Compliance is filed.

**E.** If a Mello Act Project Permit Compliance is appealed pursuant to Section 12.20.2.2 H of this Code, then LADCP shall charge and collect:

1. The appeal fees connected to the discretionary land use approval if it was filed concurrently with an application for a Mello Act Project Permit Compliance; or

2. The appeal fees set forth in Section 19.01 B of this Code if only an application for a Mello Act Project Permit Compliance was filed;

F. An initial fee of \$5,000.00 shall be charged and collected by LAHD if the assigned appellate body requests a consultant report when a Mello Act Project Permit Compliance is appealed based on a claim that application of the regulations set forth in the Mello Act Ordinance constitutes an unconstitutional taking that denies the appellant economically viable use of the subject property pursuant to Section 12.20.2.2 H 2 of this Code. This fee shall cover LAHD's initial cost to compensate the consultant to evaluate the merits of the claim. If LAHD's cost to compensate the consultant exceeds \$5000.00, then the appellant shall pay a supplemental fee equal to the additional cost. If the actual cost is less than \$5000.00, then the LAHD shall refund the difference to the appellant.

LAHD shall deposit the initial and supplemental fees into the Mello Act Ordinance Appeals Trust Fund, as described in Section 5.528.1 of the Los Angeles Administrative Code.

G. A one-time registration fee of \$370.00 shall be charged and collected by LAHD each time a certificate of occupancy is issued for an Affordable Replacement Unit or an Inclusionary Residential Unit. Thereafter, an annual fee of \$370.00 shall be charged and collected by LAHD each time the occupancy of an Affordable Replacement Unit or an Inclusionary Residential Unit is monitored pursuant to Section 12.20.2.2 E 4 of this Code.

**Sec.4. The City Clerk shall certify...**

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## MEMORANDUM

June 20, 2006

### VIA EMAIL

To: Mello Act Policy Task Force  
From: Cindy Starrett  
Estela de Llanos  
File no:  
Copies to: Mark Kelly  
Subject: County Mello Act Policy

We appreciate the opportunity to supplement our memo of May 25, 2006, in which we described several policy considerations that we hope the recently-convened Mello Act Policy Task Force will consider in formulating its Mello Act recommendations to the Board of Supervisors.

In the County-owned Marina, approximately 1,300 market-rate units are expected to be proposed under the remaining lease extensions. Application of the County's current Mello Act policy to these lease extensions would trigger approximately 130 new low-income units (in addition to any replacement units, which under the Mello Act do not need to be provided in the Marina). Recent projects have provided or are expected to provide a number of affordable units. In addition to generating substantial revenues for the County, the Marina is a public recreational resource protected under the Coastal Act. It includes some of the most expensive and difficult land to develop within the County and is subject to a number of development constraints, both legal and political.

The challenge of the Task Force is to balance these and other important considerations in formulating its recommendations. Because the need for new housing has reached critical proportions, we urge the County to consider the full range of compliance options available under the Mello Act, especially alternatives capable of generating a greater number of units at the same cost.

By Allowing Flexible Options For Complying with the Mello Act, the County Can Provide Affordable Housing Without Reducing Lease Revenues. The potential for generating affordable housing is greatly increased by allowing off-site compliance options. As described in the attached analysis by CB Richard Ellis Consulting, the County can provide the required 10%

low income units elsewhere within the Marina without significantly reducing lease revenues, even assuming similar land costs and high quality design. Put differently, off-site compliance for just half of the anticipated 1,300 market-rate units could save the County as much as \$16 million in net present value of lost lease revenues otherwise needed to make the on-site projects financially feasible. This is in large part because off-site units can leverage Low Income Housing Tax Credits and other financing alternatives that are less likely to be available to projects with a large percentage of market-rate units. Importantly, affordable housing projects that meet certain criteria can also qualify for streamlined environmental review under the California Environmental Quality Act. Projects with inclusionary requirements typically do not meet those criteria.

*In Lieu Fees and Off-Site Compliance Are Two Alternatives Available Under the Mello Act and Used in Other Jurisdictions.* In lieu fees and off-site alternatives are permitted under the Mello Act and are used in other coastal cities and counties to comply with the Mello Act. Illustrating that there is no "one size fits all" approach to Mello Act compliance, requirements vary from jurisdiction to jurisdiction. In many cases, cities and counties have adopted jurisdiction-wide requirements that apply equally within and without the Coastal Zone (e.g., San Francisco and Monterey County). In other cases, replacement requirements do not apply because the city is exempt from such requirements under the Mello Act due to a shortage of vacant land available for residential use (e.g., El Segundo and Manhattan Beach).

Some jurisdictions have made an express finding that off-site alternatives or in lieu fees are desirable because of their potential to generate a greater number of affordable housing units. For example, in adopting its affordable housing policy, San Francisco determined that "[i]f a project applicant may produce a significantly greater number of affordable units off-site[,] then it is in the best interest of the City to permit the development of affordable units at a different location than that of the principle project." Similarly, Monterey County has determined that the in lieu fees allowed under its inclusionary housing ordinance are "appropriate and permissible." Other jurisdictions that allow off-site alternatives and/or payment of in lieu fees within coastal areas pursuant to their inclusionary housing ordinances include Newport Beach, Santa Monica, Oceanside, Pismo Beach, Coronado, Del Mar, Encinitas, San Clemente, and Santa Cruz.

Other jurisdictions have found ways to leverage in lieu fee payments directly or indirectly into off-site alternatives. One approach has been to allow developers to make a contribution directly to identified non-profit housing developers or the city/county housing authority for projects that are viable but need additional funding (e.g., Monterey County). Another approach has been to create an "affordable housing trust fund" that can be used to create and maintain affordable housing within the Coastal Zone (e.g., San Francisco and Santa Cruz). The Mello Act gives the County flexibility to implement these kinds of programs.

*Done Right, In Lieu Fees and Off-Site Alternatives Can Provide High-Quality Affordable Housing with Important Amenities, as Well as More Affordable Units.* Affordable housing projects are not, by definition, low quality housing projects. The attached photographs show examples of high quality affordable housing built by Bridge Housing at Irvine Ranch. (See attached photographs of recent Bridge Housing project.) As affordable housing developers know, off-site projects that are 100% or substantially affordable can be beautifully designed and

can feature amenities specifically tailored to meet residents' needs. For example, projects can be designed for especially for families by including computer rooms, homework centers, day care facilities or playground equipment that might not be included in a high-end luxury project geared more towards affluent professionals or retirees. This kind of special focus on well-designed, high quality amenities geared towards particular resident populations is the hallmark of such affordable housing programs as Century Housing's "More Than Shelter" program. (See attached Century Housing materials.)

*The County's Mello Act Policy Must Be Reconciled with State Density Bonus Requirements.* The County is currently considering an ordinance to implement SB 1818, which amended the state density bonus law that requires the County to provide developers with a number of incentives if a project includes an affordable housing component. The incentives vary according to such factors as the percentage of affordable housing that is proposed, whether the units are for very low-, low-, or moderate-income households, and whether a project is for-sale or for-rent. The changes required by SB 1818 generally make it easier for developers to qualify for incentives, which improve the feasibility of providing affordable housing. Notably, SB 1818 allows the County to provide incentives to developers that donate off-site land for purposes of developing affordable housing and to projects that include housing for moderate income households.

The County should ensure that any changes to the Mello Act policy are consistent with the County's SB 1818 implementation ordinance, which we understand the Board of Supervisors is scheduled to consider in late July. Activities that generate incentives under the state density bonus law – such as donations of off-site land and reservation of units for moderate income households – should be permitted and encouraged under the County's Mello Act policy. Because the Mello Act states that "local governments shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees" for new housing developments, any revisions to the current Mello Act policy should permit developers to take advantage of the full menu of incentives required under state law.

*The County's Policy Should Be Based on Input from All Stakeholders.* We strongly urge the Task Force to solicit input from stakeholders, including housing developers, affordable housing advocates, as well as non-profit housing developers and investors. Our experience on other housing projects and initiatives shows that the relevant policy issues and technical questions are best explored through a dialogue among diverse parties. Affordable housing developers, for example, can help identify compliance options and address the mechanics of affordable housing, while investors can address the rate of return required as a practical matter for economic feasibility. Together with these parties, the County can identify other alternative sites and potential development partners for Mello Act compliance either within the Marina, elsewhere within the Coastal Zone, or within three miles thereof.



Potential Approaches Under the Mello Act. In lieu fees and off-site alternatives, based on appropriate findings, are important tools for the County to consider in protecting its Marina-based revenues. Below are just some of the potential compliance options available under the Mello Act, which we hope the County will consider.

- *On-site Moderate Income Housing and Tiered Percentage Requirements.* On-site compliance could expressly permit developers to set aside units for moderate income households, rather than just low income households. The County could also consider requiring lesser percentage requirements for low-income housing than for moderate-income housing.
- *Off-site Joint Development by Marina Lessees of Marina Parcel.* The County could assist in identifying a site within the Marina to serve as the location for an affordable housing project that would be built using contributions from Marina lessees.
- *Requirement for Market-Rate Developers to Partner with Affordable Housing Developers for Off-site Projects.* The County could allow market-rate developers to partner with affordable housing developers to provide the required number of units off-site, either within the Marina, elsewhere within the Coastal Zone, or within three miles of the Coastal Zone.
- *Creation of Affordable Housing Trust Fund to Allocate In Lieu Fees Towards Identified Off-site Projects.* The County could establish an “affordable housing trust fund” to ensure that any fees collected for the purpose of providing affordable housing are used to build affordable housing. A list of eligible projects could be maintained to ensure that any funds are used to build housing.

We continue to hope that the Task Force’s recommendations include clear guidelines and flexible options for complying with the Mello Act. By establishing a consistent methodology for determining feasibility and allowing developers to comply with Mello Act requirements through a number of alternative compliance options, the housing supply – both market rate and affordable – can be increased.

# **CB RICHARD ELLIS CONSULTING**

June 20, 2006

Mr. Mark D. Kelly  
Sr. Vice President - Development  
Lyon Capital Ventures  
4901 Birch Street  
Newport Beach, CA 92660

**Re: Benefits of Offsite Affordable Housing For Los Angeles County Marina Del Rey**

Dear Mark:

With approximately 1,300 new housing units proposed for development in Marina del Rey, the County compliance with the Mello Act may require 130 affordable low income units (10%) to be developed. There are tremendous financial advantages to the County associated with providing offsite units as compared to a mandatory inclusionary policy. Although we cannot predict how many units will be developed using Type I construction versus cheaper Type V construction, per your request we have analyzed just the financial impacts to the County assuming 650 new units with Type I construction providing 65 on-site affordable units versus providing 65 offsite Type V construction units off-site elsewhere within the Marina.

The County's current policy provides for an in lieu fee of \$7.11 per square foot, which would generate approximately \$10 million based on an average +1,000 sf unit size (\$7,100 per unit). New projects have been designed to be feasible within a reasonable range of this fee.

**Onsite Units**

By requiring onsite inclusionary units for expensive concrete and steel construction mid-rise projects, the cost to build each unit is approximately \$450,000. After deducting the estimated \$50,000 market financing value generated by low income rent levels, it leaves a \$400,000 subsidy per unit. For 65 affordable units, this would require approximately \$26 million in total subsidy.

**Offsite Units**

By developing offsite affordable projects with 3-4 story wood-frame construction, units could be built for an average cost of \$275,000/unit - including land). After

Mark Kelly  
June 20, 2006  
Page 2

deducting the market value of \$50,000 per unit, the net subsidized cost is \$225,000 per unit, or 55% of the cost for Type I construction.

By developing 100% offsite affordable units, the Project would likely qualify for 9% LIHTC tax credits, which would provide approximately \$110,000 per unit in equity, or 45% of the net costs. Combined with the lower construction costs, 65 units could be built with a total private investment of \$7.5 million.

### Net Savings to County/Developer

As shown in Table 1, an inclusionary policy for 10% low-income units could result in up to a \$18.5 million extraordinary cost to the development community above the in lieu fees, making these projects infeasible without County rent adjustments. Offsite units would require only \$2.5 million increase in funding, a savings of \$16 million that could be applied to add more affordable units or helping enable the County to minimize the financial impact on proposed ground rent levels.

**Table 1**  
**Cost Comparison of Offsite vs. Onsite Units\***

	Onsite	Offsite	Net Change
65 Low Income Units			
Total Dev. Costs	\$26,000,000	\$17,500,000	10,000,000
Financing Value	<u>2,500,000</u>	<u>2,500,000</u>	=
Net Subsidy Required	\$23,500,000	\$15,000,000	10,000,000
Tax Credits	--	7,500,000	7,500,000
Net Cost	<u>\$23,500,000</u>	<u>7,500,000</u>	<u>17,500,000</u>
Current In Lieu Fees	\$5,000,000	\$5,000,000	--
Loss of County Rent For Feasibility	\$18,500,000	\$2,500,000	\$16,000,000

\*Illustrates impact of 10% onsite affordable on Type I construction projects. The cost differential for onsite Type V construction would be significantly less, but still material.

### Other Impacts

County ground rent is based on gross rental income received. We note that market rents have historically grown at several percentage points faster than median income. Therefore, under an on-site inclusionary scenario, the County will not only



Mark Kelly  
June 20, 2006  
Page 3

lose the 10.5% ground rent differential between current market rents and affordable rents, but this rent loss will widen substantially over the long-term.

In conclusion, there are major financial benefits for providing offsite affordable units as the County considers its Mello Act policy.

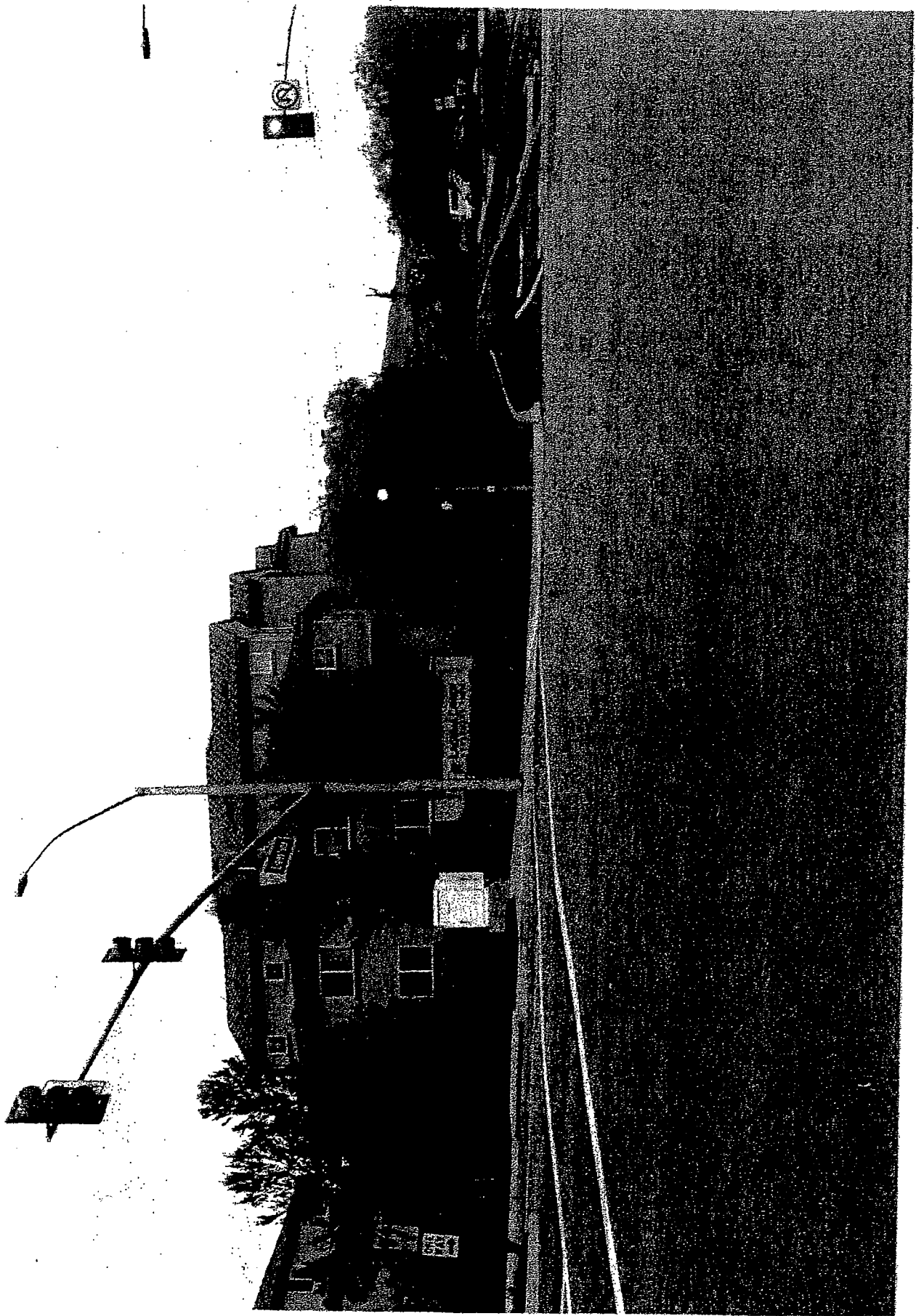
If you have any questions, please do not hesitate to call me.

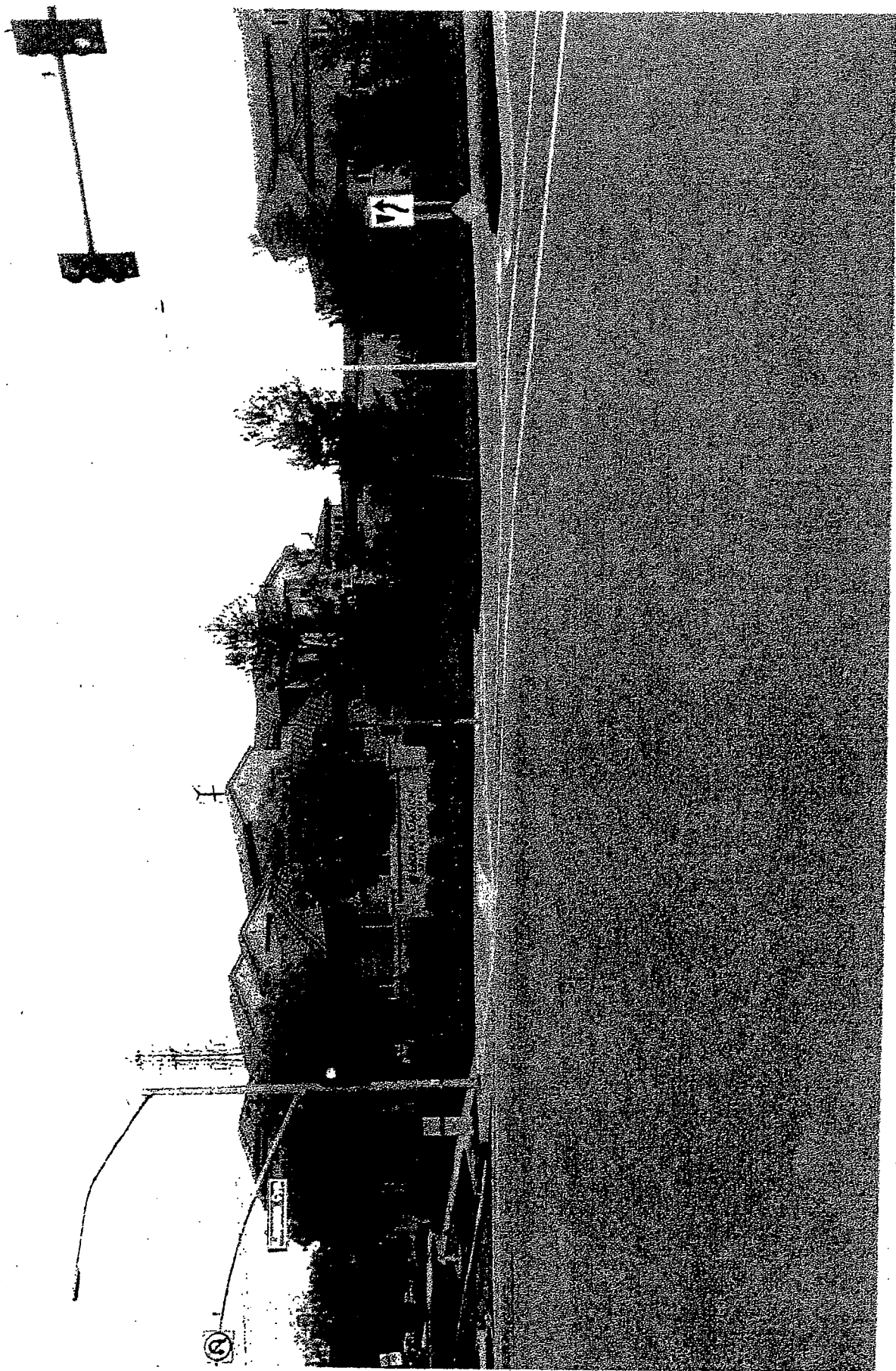
Sincerely,

A handwritten signature in dark ink, appearing to read "T. Jirovsky", with a stylized flourish at the end.

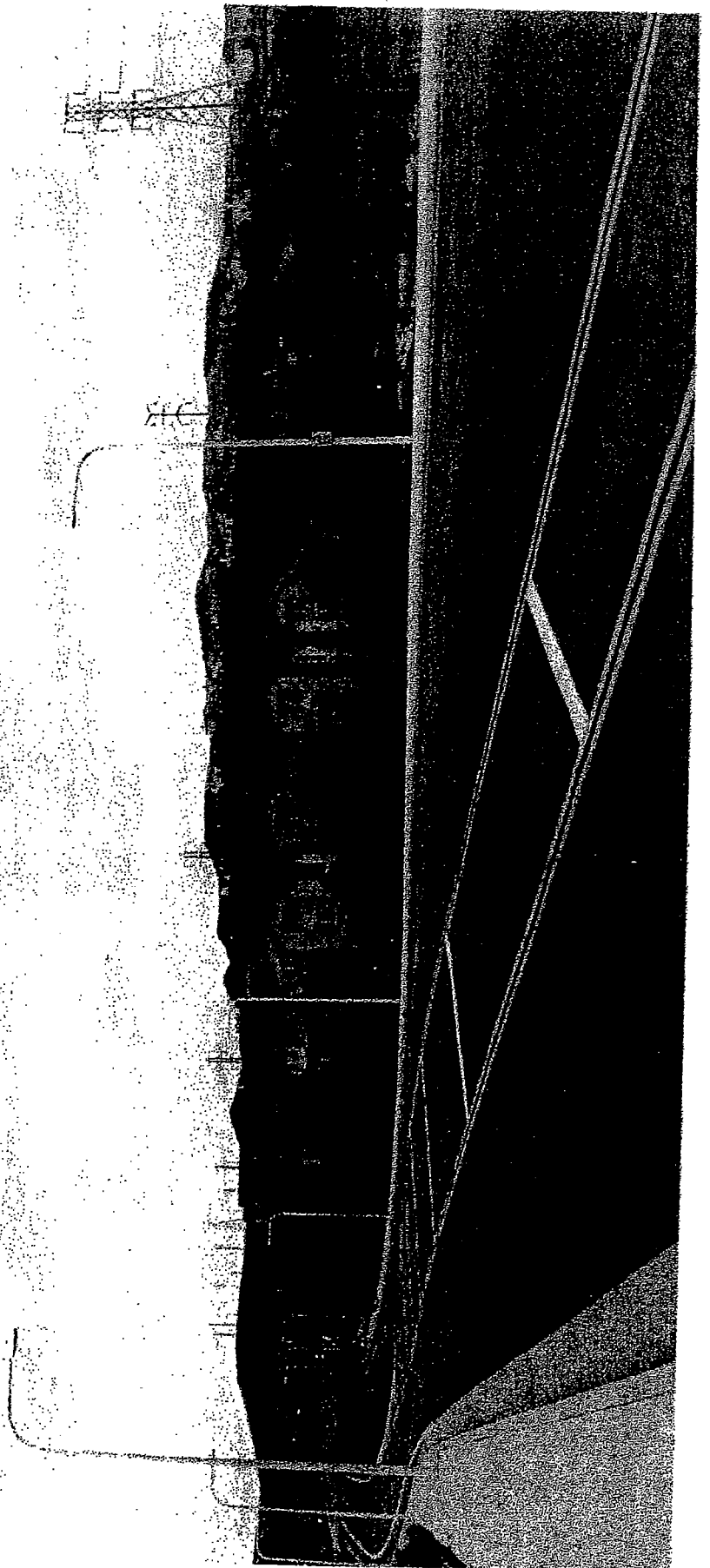
Thomas R. Jirovsky  
Sr. Managing Director.

**PHOTOGRAPHS OF  
BRIDGE HOUSING AT IRVINE RANCH**









**“MORE THAN SHELTER” PROGRAM  
(CENTURY HOUSING)**

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## *more than shelter:*

Century funded affordable housing developments include **More Than Shelter®**.

At Century, we help create affordable, quality, aesthetically pleasing housing. We work with developers and the adjacent community to include what we call **More Than Shelter** amenities designed to assist residents—from toddlers to seniors—with services and features they need most, such as child development centers, after-school academic tutoring, recreational facilities, and computer rooms. Other **More Than Shelter** programs include life-enhancing services and activities for seniors, construction job training and placement, and transitional housing and services for formerly homeless veterans. We believe that these **More Than Shelter** amenities turn a building into a home and a development into a community.

**MORE**  
*than*  
**SHELTER**

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☐ Century's Site

Donate  
Today!



To help support these important programs, Century Housing created **The More Than Shelter Fund**, devoted to raising operating and capital funds to create **More** quality child development centers, **More** after-school tutoring programs, **More** wellness programs for seniors, **More** construction job training and placement for local residents, **More** transitional housing for families

and individuals...**More Than Shelter**.

To learn more about how you can help support **The More Than Shelter Fund**, please visit The Fund's website at [www.morethanshelterfund.org](http://www.morethanshelterfund.org).

## More Than Shelter services include:

Child Development • After-School Academic Tutoring  
Transitional Housing & Homeless Veteran Services  
Senior Wellness • Job Training & Placement

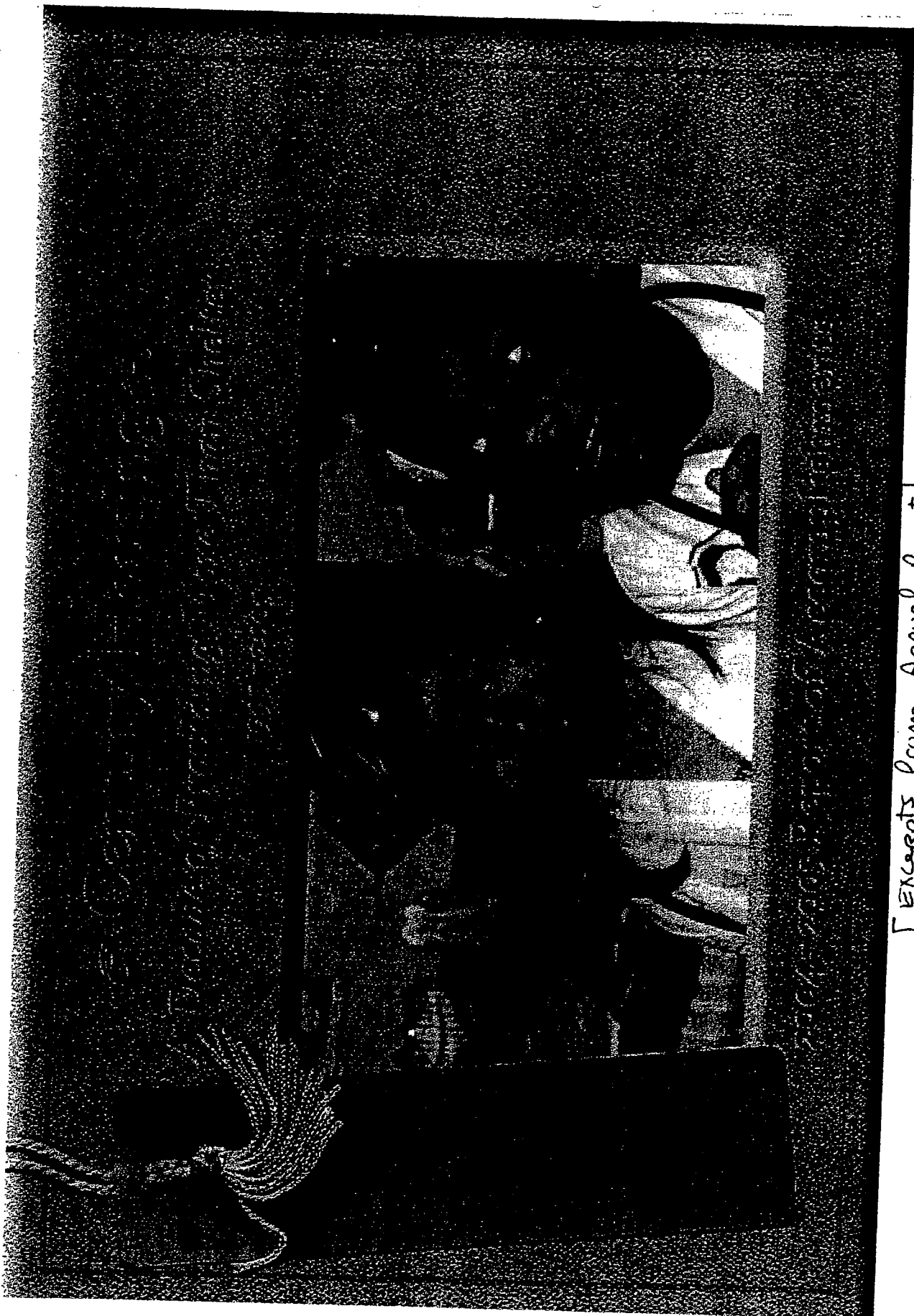
## Recent More Than Shelter innovations:

- **The Cabrillo Plaza Apartments**, the latest phase of development at the Century Villages at Cabrillo, featuring rental units for 200 formerly homeless veterans transitioning back into society by paying rent according to their income.
- **The Burbank Senior Artists Colony**, an affordable 141-unit senior apartment complex in Burbank, includes a 45-seat theater and screening room, two fine arts studios used for art classes and as free studio space for resident artists, gallery space that displays resident art, a media arts complex with a digital video editing bay, and a computer center. Also onsite is the **More Than Shelter For Seniors® (MTSFS)** program, offering classes ranging from health and fitness to computers. An onsite library will soon offer an intergenerational read aloud program with a Burbank Unified School District kindergarten next door to the Senior Artists Colony.
- **Three Century/Learning Initiatives For Today® (Century/LIFT®) Teen Centers**, located in affordable apartment complexes, designed specifically for teens seeking homework assistance, college and financial aid application guidance, and a safe place to spend after-school time.
- **The Century Community Training Program (CCTP)**, which has graduated more than 1600 community residents in 15 cities to prepare them for construction trade apprenticeships. More than 1,300 have been placed in building trade jobs, increasing their earning potential—17% of them women.

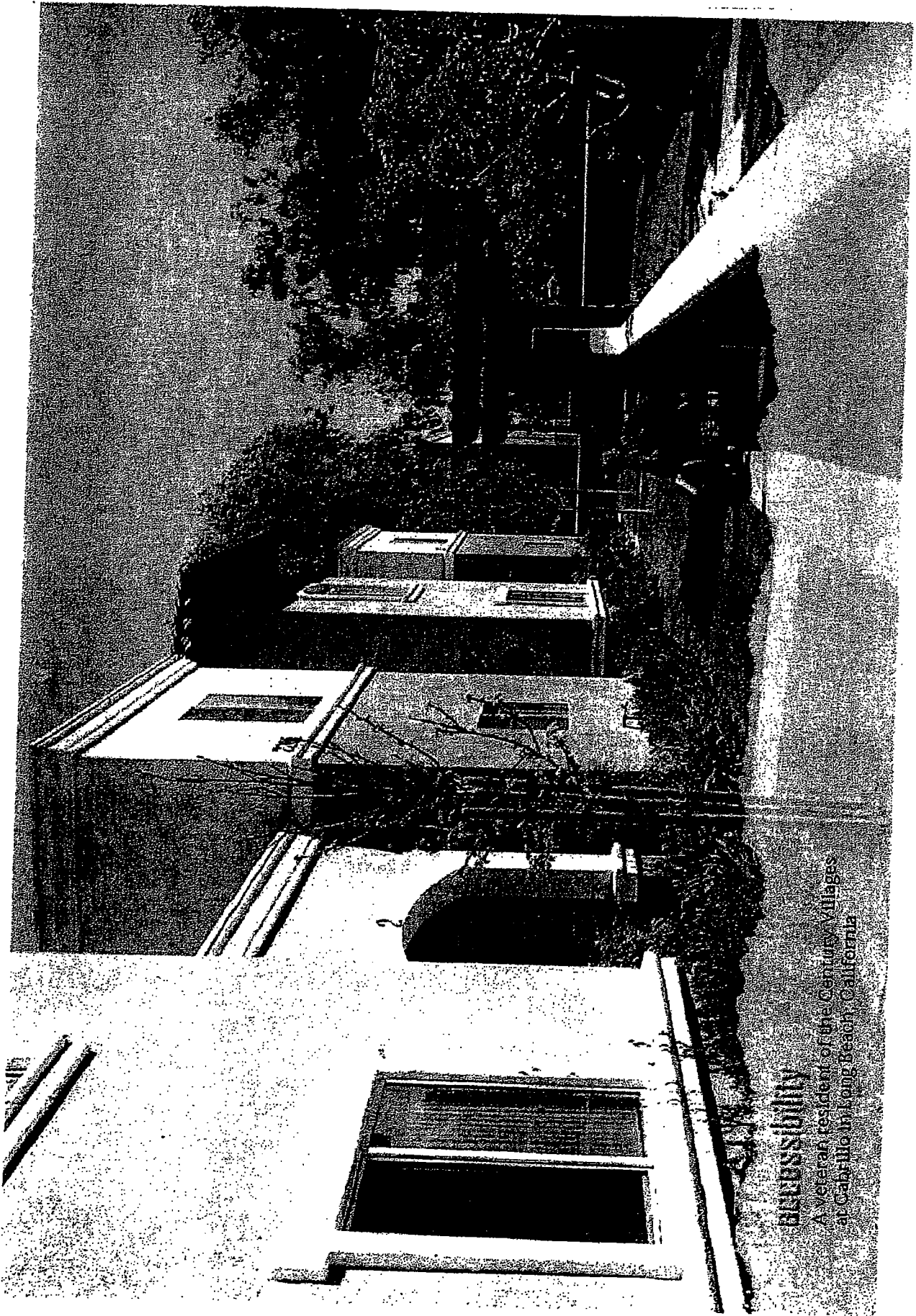
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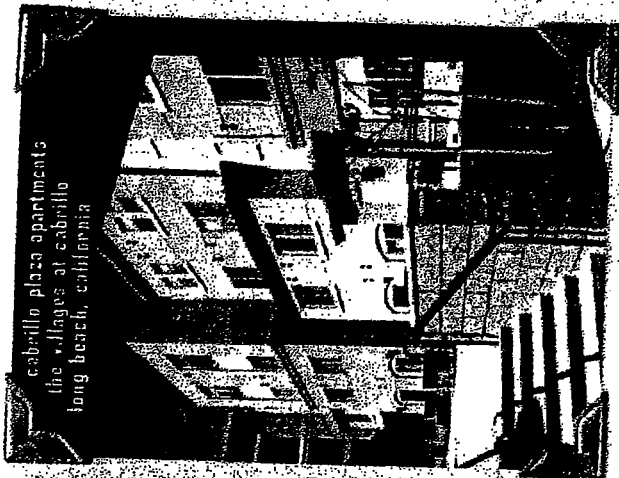
[Excerpts from Annual Report]



## EMERGENCY

A veteran resident of the Century Villages  
at Oak Hills in Long Beach, California

# housing and services for the homeless



cabrillo plaza apartments  
the villages at cabrillo  
long beach, california

On any given night, more than 88,000 homeless people—nearly 20% of them veterans—sleep on the streets in Los Angeles County. To address this crisis, Century provided more than \$8 million in financing for the 1996 conversion of a Northrop University dormitory into Westside Residence Hall in Inglewood. The 515-bed transitional housing facility is run by U.S. VETS (formerly L.A. VETS), the nation's largest service provider dedicated to helping homeless veterans.

Century and U.S. VETS expanded their shared vision in 1999 with the Villages at Cabrillo, a 26-acre transitional housing facility located on a former U.S. Naval housing site in Long Beach. Serving more than 4,000 formerly homeless men, women, and children annually, it is the largest facility of its kind in the country.

Phase I of the Villages at Cabrillo held its grand opening in 1999, offering transitional housing and social services managed by U.S. VETS and other service providers, including the Salvation Army, the California Employment Development Department, and Catholic Charities. In August of 2004, Phase II of the Villages at Cabrillo was completed. Cabrillo Plaza Apartments features 200 sober-living rental units for veterans who have found employment and are able to pay rent based on their income levels. Tax credit funding of \$20.6 million for Phases I and II was provided by John Hancock Realty Advisors through the John Hancock Tax Credit Fund V, LLC, and Century has provided more than \$39 million in financing for Villages at Cabrillo.

Phase III, to be called The Family Commons at Cabrillo, will feature larger units of up to four bedrooms for families in need who have found steady work and are more established in their transition from homelessness. With the City of Long Beach as a partner, Century will finance an additional \$25 million for Phase III, providing housing for 80 families.

Other innovative Century-financed transitional housing developments include SRO Housing's Rivers Hotel featured on page 17, and the P.A.T.H. (People Assisting The Homeless) Regional Homeless Center located in Hollywood. Completed in 2002, the P.A.T.H. Regional Homeless Center features a one-stop "mall" of social services including an employment agency, personal grooming salon, substance abuse counseling center, mental health care, medical clinic, and a community court.



p.a.t.h. regional  
homeless center  
hollywood, california

— the past decade —



**a complete makeover**  
The Rivers Hotel, in the Central City East  
neighborhood of Los Angeles





# rivers hotel

Rivers Hotel, which received a \$400,000 acquisition loan from Century Housing, opened in 2003 in the Central City East area of Los Angeles at 7th Street and Central Avenue, more commonly known as "Skid Row." Each of the 76 efficiency units includes a kitchenette and private bathroom, with 35 of the units set aside for a special needs population. The building features a spacious lobby and beautiful patio grounds, and 10 artist live/work spaces at affordable rents on the first floor. Rivers Hotel was developed by SRO Housing Corporation, a leading Los Angeles provider of service-enriched housing for the homeless and others at the lowest income levels. SRO Housing's tenants have access to job search assistance, recovery programs, case management, mental health services, health screenings, and more.

Luanne, a longtime resident of Downtown Los Angeles, lives in one of the artist spaces at the Rivers Hotel, surrounded by her art. Also a longtime member of the downtown arts community, Luanne serves as an advocate for the homeless by organizing creative activities in parks and on the streets. She continues to produce her artwork despite debilitating health problems and chronic pain. Describing herself as "compulsively creative," she writes music, and creates art in a broad range of media including silkscreen, linoleum block print, acrylic paint, and collage.

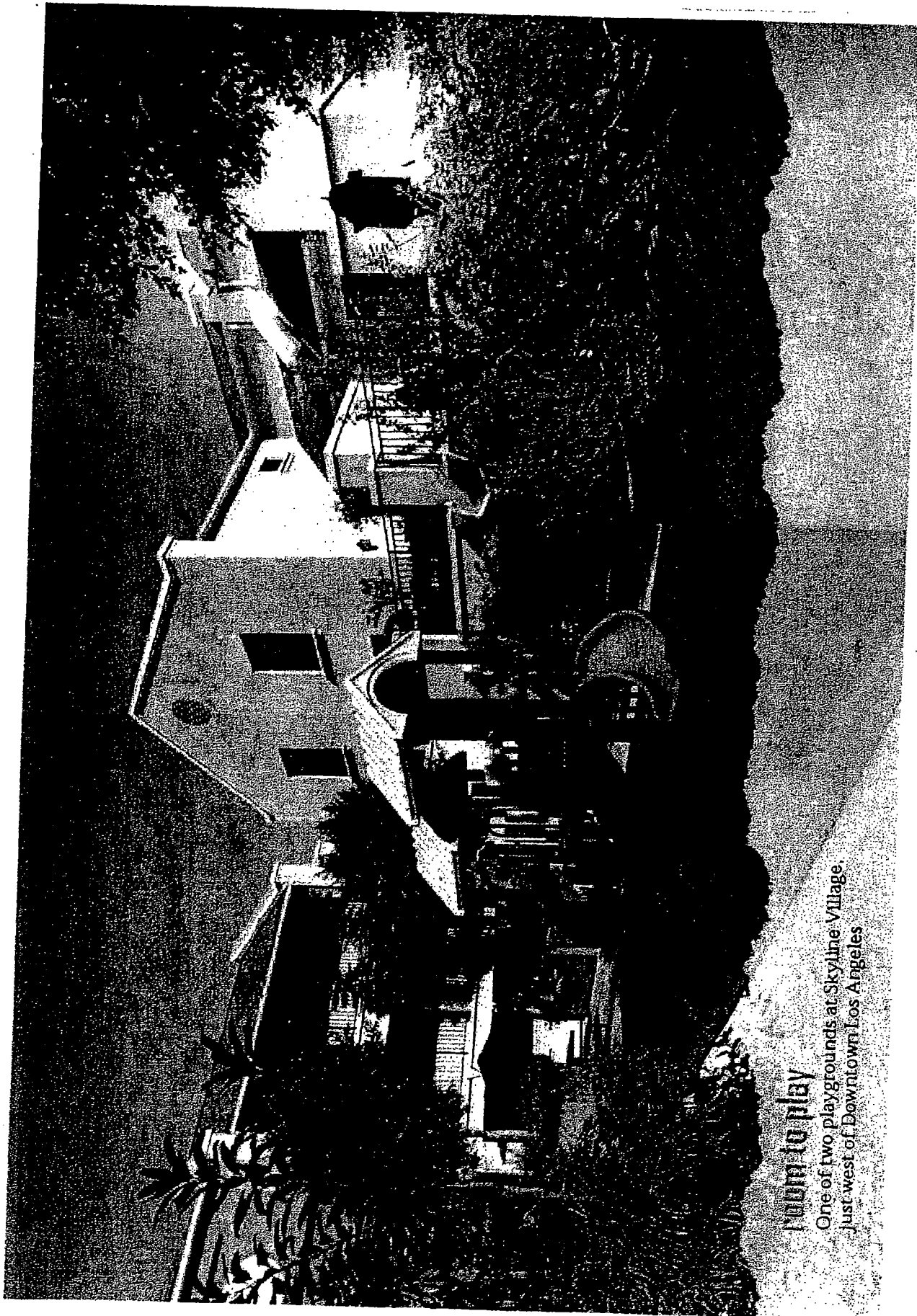
A trained musician with years of study on piano, trumpet, and guitar, Luanne now has a safe place to keep a keyboard and some recording equipment, which she uses to compose her own material.

Before coming to Rivers, Luanne struggled for 14 years to create art in the only housing she could afford at the time—a small efficiency unit in another of SRO Housing's downtown hotels. "I had to work on the floor in my room, on the floor in the hall, in the patio in the back. I made scaffolding out of saw horses—it was a little wild!" she says. Now her home is a bachelor apartment attached to a spacious studio with a storefront entrance, and floor-to-ceiling gallery windows, where she can display and sell her art. "This is the first time in 20 years I've actually had a home—where I moved in and I had a bathtub that no one had ever bathed in, a kitchen that no one had ever cooked in. Just brand spanking new."



**new financing**  
 Skyline Village in Los Angeles, with funding from  
 Century Community Development, Inc.

**Skyline Village in Los Angeles, with funding from Century Community Development, Inc.**



## Room to play

One of two playgrounds at Skyline Village,  
just west of Downtown Los Angeles

## skyline village

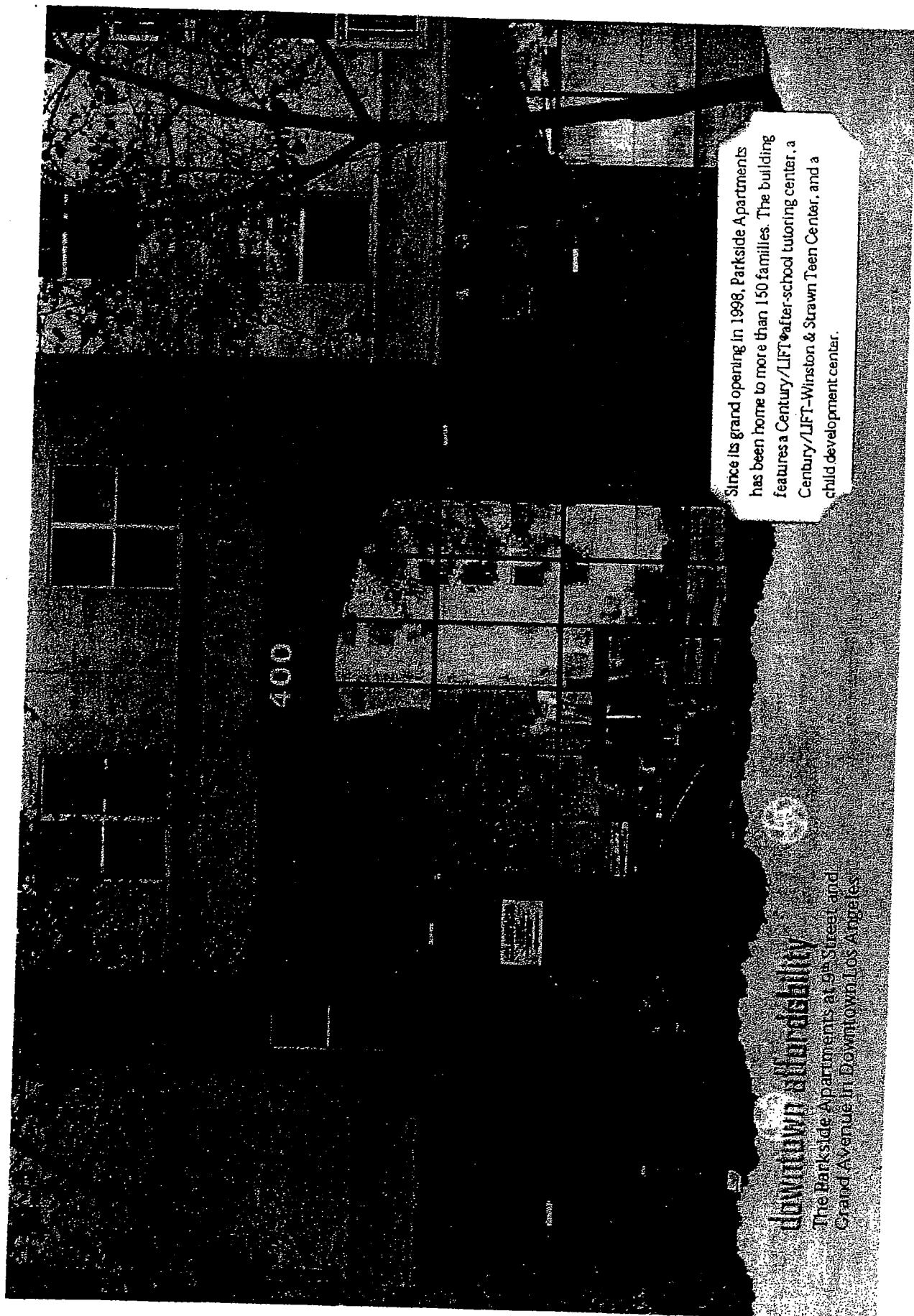
Located just west of Downtown Los Angeles, Skyline Village celebrated its grand opening in August 2005. The 73-unit affordable apartment complex sits on a park-like, landscaped campus with two playgrounds, a picnic area with a gourmet barbecue, a basketball court, and apartment balconies overlooking it all. The campus also features luxury amenities such as a community room with a flat screen television and surround sound, a computer lab with free Internet access, a fitness center, and gated underground parking.

The Los Angeles Housing Department estimates that the city is more than 60,000 units short of apartments for working families who need larger units. With 37 three- and four-bedroom units, Skyline Village fulfills a great need. Financed in part with a \$1.4 million site acquisition loan from Century Housing and a \$550,000 bridge loan from Century Community Development, Inc., Skyline Village was developed and is managed by Thomas Safran & Associates.

Luz, her husband Salvador, and their four children—ages 11 through 16—had been living in a cramped two-bedroom apartment for years. Her youngest daughter requires her full-time attention; the 13-year-old is on a feeding tube as a result of gastroesophageal reflux disease and suffers from mild cerebral palsy and asthma. After being on a Section 8 waiting list for three years and searching in vain for a decent apartment for two years, Luz was called one day last year to her daughter's school because the young girl was running a fever. On her way, Luz saw a line of people in front of the soon-to-be opened Skyline Village. She quickly parked, jumped out of her car, and got an application. The \$45 parking ticket she discovered upon returning to her car was a small price to pay for their beautiful new four-bedroom home. "We could not afford to pay \$45, but it was worth it. I'm so glad to live in this place."

— the reporting years: July '03 to June '05 —



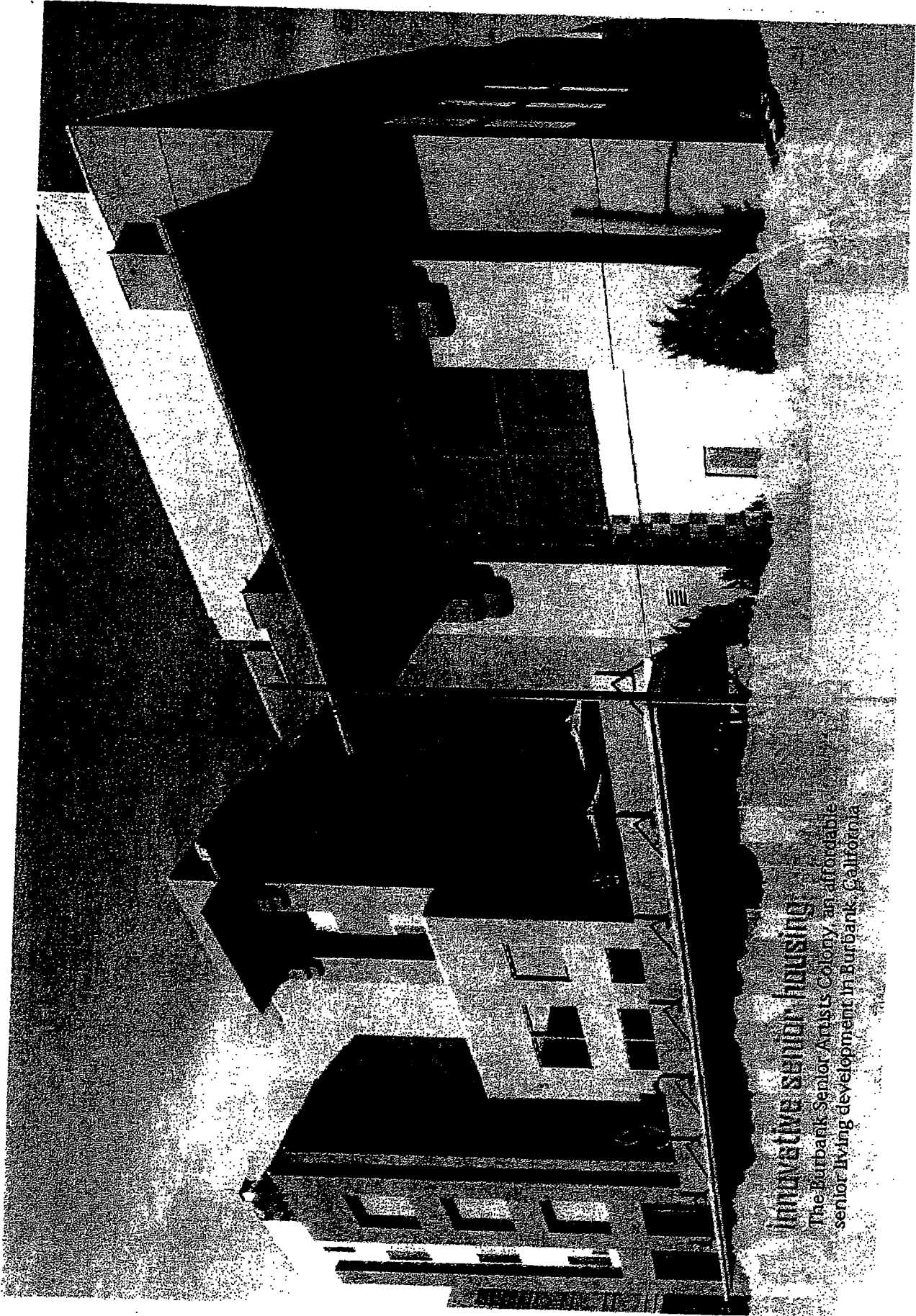


Since its grand opening in 1998, Parkside Apartments has been home to more than 150 families. The building features a Century/LIFT after-school tutoring center, a Century/LIFT-Winston & Strawn Teen Center, and a child development center.

## downtown affordability

The Parkside Apartments at 9th Street and Grand Avenue in Downtown Los Angeles





**Innovative Senior Housing**  
The Burbank Senior Artists Colony, an affordable senior living development in Burbank, California

# burbank senior artists colony

Developed by Meta Housing, and financed in part with a \$1 million bridge loan from Century Housing, the Burbank Senior Artists Colony is one of Southern California's most innovative senior housing communities. Opened in April 2005, the 141-unit apartment complex provides More Than Shelter For Seniors amenities for retired artists (and those who have always wanted to be artists). Features include a 4.5-seat theater and screening room, two fine arts studios, gallery space that displays resident art, a media arts complex with a digital video editing bay, and a computer center.

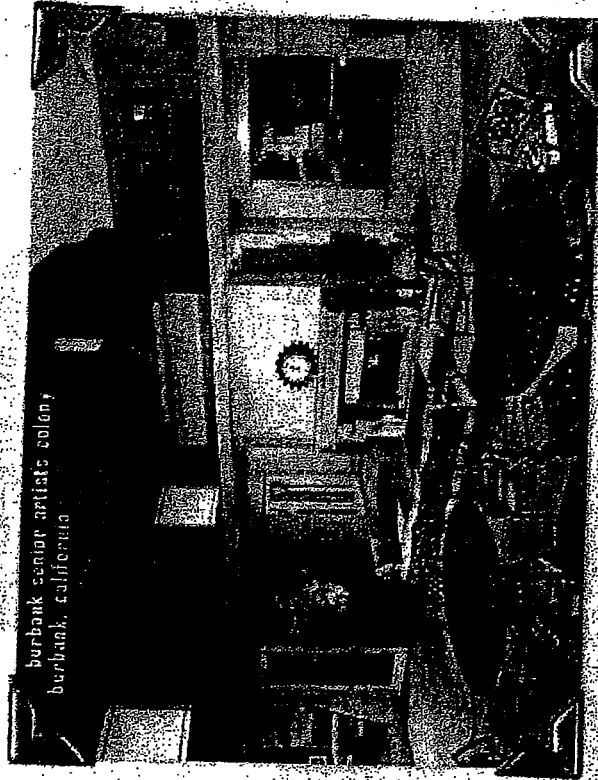
All units, both one- and two-bedroom, feature a patio with exterior views. Thirty percent of the units are reserved for low-income seniors. Other amenities include community outdoor patio areas with mountain views, a swimming pool, fitness center, and a clubroom with a wide screen plasma TV and a baby grand piano.



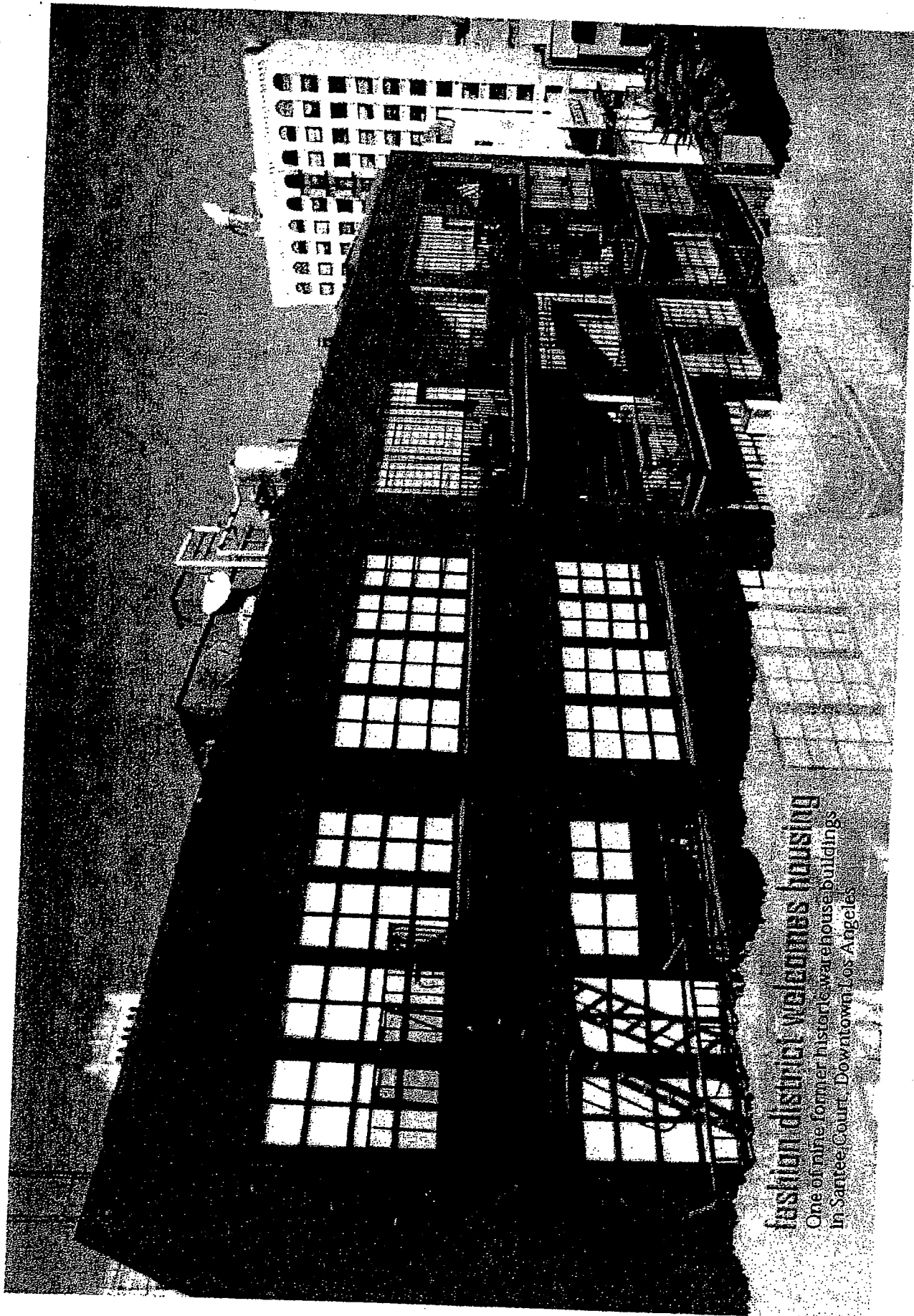
Suzanne, originally from Boston, Massachusetts, has found a new talent in her later years—writing screenplays.

With encouragement from writing classes offered in the More Than Shelter For Seniors program at the Burbank Senior Artists Colony, where she lives, Suzanne has written a short film that will be produced at the Artists Colony facility with other residents. She credits the program with helping her discover her hidden talents.

"I never wrote dialogue in my life before, and now I am about to learn film editing. Without this program, I never would have known that I had these talents," she says.



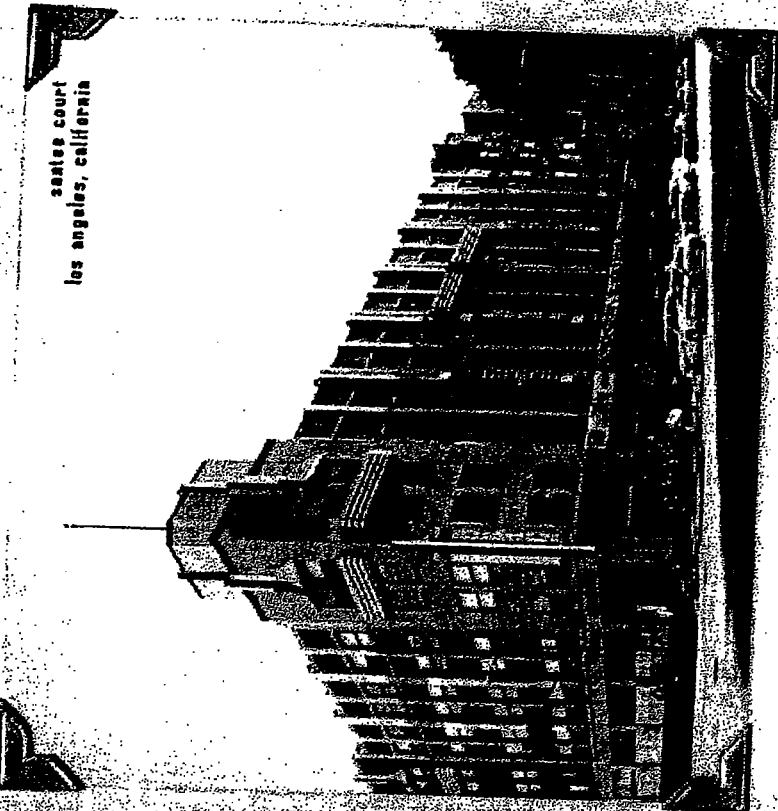
burbank senior artists colony  
burbank, california



**fashion district welcomes housing**  
One of nine former historic warehouse buildings  
in Santee Court, Downtown Los Angeles



santee court  
los angeles, california



## santee court

One of the largest adaptive reuse developments in Los Angeles, Santee Court is an innovative conversion of nine Fashion District warehouses designated as local historic monuments. As a cornerstone of Downtown Los Angeles' burgeoning residential community, the complex includes beautiful outdoor patios and courtyards and an extensive use of rooftop space, including a swimming pool, hot tub, basketball court, barbecue area, putting green, and mini driving range.

Phase I, for which Century provided a \$3 million guaranty loan, included the creation of 165 workforce loft apartments, 35 of which are restricted to very low-income earners. Designed to meet the needs of downtown workers, the mixed-use development also features 44,000 square feet of retail and commercial space. MJW Investments, which purchased the buildings in 1998, developed the property.



Alonzo, an actor and security guard for "red carpet" events, had been living in Rancho Cucamonga with his wife and two young sons. When his marriage ended, he was awarded the apartment the family had been living in, but he chose to allow his ex-wife and sons to remain there because it was less disruptive for his children. Looking for his own place, however, was more difficult than he expected; he ended up staying with a friend for more than a year. Finally, he applied for and was selected to live in an affordable apartment at Santee Court, where he now enjoys downtown living, and plans to graduate from California State University, Los Angeles. Encouraged by the supportive management, Alonzo says the Santee Court staff is "like a second family to me."

## other recent loans

### site acquisition loans

**Abbey Apartments, Downtown Los Angeles**  
Funding was provided in participation with Low Income Investment Fund for a 115-unit permanent single room occupancy development for formerly homeless individuals. **\$1,575,000**

**Emerald Terrace Family Apartments, Central City West**  
Funding was provided to Meta Housing for the development of an 84-unit affordable multifamily apartment community. **\$735,000**

**Harvard Heights Apartments, Koreatown**  
Funding was provided to Harvard Heights Partners for the acquisition of a site that will be developed into 44 units for very low-income families. **\$935,000**

**Menorah Housing Foundation Senior Housing, Northridge**  
Funding was provided to Menorah Housing for the development of 80 affordable units of senior housing for very low-income individuals. **\$1,375,000**

**W.P. Fuller Building, Lincoln Heights**  
Funding was provided to Livable Places, Inc. for the adaptive reuse of an historical industrial building to create 102 workforce and low-income for-sale condominium units. **\$1,487,000**

**Seasons at Compton, Compton**  
Funding was provided, in participation with Housing Partnership Network, to LINC Housing for the development of 118 units of very low-income senior housing. **\$3,258,400**

**Avalon II Apartments, Willowbrook**  
A multipurpose acquisition and predevelopment loan was provided to Avalon Housing Partners, L.P. for the development of a 65-unit development for low-income seniors and single mothers. **\$1,200,000**

**Willshire Court Apartments, Downtown Los Angeles**  
Funding was provided in participation with Low Income Investment Fund and Genesis LA for the acquisition of a site that will be developed into 201 units of family housing, of which 41 units will be affordable to very low-income families. **\$4,500,000**

**West Angeles Townhomes, Crenshaw District**  
Funding was provided for the acquisition of a site that will be developed into 52 workforce and low-income condominiums. **\$2,043,000**

### predevelopment loans

**Casitas De Oro, Antelope Valley**  
Funding was provided to L.A. Family Housing for the creation of 204 apartment homes, of which 80% will be affordable to low- and moderate-income families. **\$300,000**

**52nd Street Senior Housing, Los Angeles**  
Funding was provided to WHAR Housing Corporation to assist in the creation of 45 units of low-income senior housing. **\$36,400**

### bridge loans

**Northwest Gateway Apartments, Central City West**  
Funding was provided to Meta Housing for a 276-unit multifamily development, of which 57 units will be affordable to very low-income families. **\$3,200,000**

**Cecil Younger Gardens, Van Nuys**  
Funding was provided to L.A. Family Housing for a 30-unit affordable development. **\$250,000**

### construction loans

**6843 Agnes, North Hollywood**  
Construction and permanent loan funding from Century subsidiary, The Century Community Lending Company, helped finance a five-unit workforce housing development. **\$675,000**

**Pascual Reyes Townhomes, Downtown Los Angeles**  
Funding was provided to Pico Union Housing Corporation for the construction of a 13-unit large family development for very low-income households. **\$2,832,000**

**12040 Dehounge, North Hollywood**  
Funding was provided from Century subsidiary, The Century Community Lending Company, to refinance construction debt with a permanent loan for a five-unit workforce family development. **\$615,000**

### other funding

**Distressed Single-Family Homes, Southeast Los Angeles**  
A two-tier revolving line of credit was provided to Gateway Cities Partnership, Inc. for acquisition and rehabilitation expenses associated with the purchase of distressed single-family homes in southeast Los Angeles. **\$4,000,000**

**Woodbridge Manor Apartments, Irvine**  
Funding was provided to Irvine Housing Opportunities to rehabilitate a 150-unit, affordable senior development and to construct an on-site senior assisted living facility. **\$250,000**

**L.A. Family Housing, Los Angeles**  
A two-tier line of credit was provided to L.A. Family Housing for predevelopment and operating expenses, and future development opportunities. **\$500,000**

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## MEMORANDUM

May 25, 2006

To: Richard S. Volpert  
From: Cindy Starrett  
Estela de Llanos

File no:

Copies to: Mark Kelly

Subject: Policy Considerations for County Mello Act Compliance Alternatives

## I. INTRODUCTION

We understand that concerns have been raised in the context of several proposed Marina del Rey projects about the County existing Mello Act policy, and that the County has convened a staff Task Force to review Mello Act issues. We further understand that the Task Force is scheduled to report back to the Board of Supervisors soon with recommendations regarding the County's existing policy, which was adopted in 2002. As you know, we were recently retained by Lyon Villa Venetia – which is currently working with the County on a proposed project – to review these issues. We hope that input from stakeholders, including housing developers, affordable housing advocates, and non-profit housing developers, will be considered by the Task Force before any recommendations are completed. We attended yesterday's excellent presentation on this issue at the Regional Planning Commission, and appreciate the Commissioners' identification of many complex issues in this arena.

Our recent experience with the application of the Mello Act, including in the Venice area of the City of Los Angeles, confirms the need for flexibility in its application. The Mello Act is intended to provide local jurisdictions with discretion in imposing affordable housing requirements in the Coastal Zone, because each situation presents some unique facts and public policy considerations. We do not believe the County is legally required to reexamine the existing rules, upon which developers of proposed projects have reasonably relied. Given that the Task Force is proceeding, however, this memo summarizes several public policy goals which we hope that the Task Force will consider in its deliberations. We also request an opportunity to meet with the Task Force to discuss these issues in detail. We appreciate your invitation to present this brief summary in connection with that request.

## II. POLICY ISSUES AND CONSIDERATIONS

A central premise of the Mello Act is that affordable housing can be required only if “feasible”, a statutorily-defined term that requires decision-makers to consider whether a project can be *successfully* completed within a *reasonable period of time*, taking into account *economic, environmental, social and technical* factors. Some of these factors which the County should consider in reviewing its existing policy are as follows:

- *The County of Los Angeles is Uniquely Situated as Landowner.* In other Mello Act contexts the economic impact of any required subsidies or contributions impacts primarily the landowner and/or developer, by requiring reductions in land costs and reducing the return on the projects. However, the County’s experience as landowner for many years has been that rents from the Marina have served as a substantial source of the County’s unrestricted funding. These monies contribute to the County’s overall budget, which is used to fund important County-wide programs, including health care and other social services that benefit low and moderate-income individuals and families throughout the County. For example, for the current fiscal year, over 50% of Marina del Rey ground rent proceeds will be transferred from the County of Los Angeles General Fund to the County Department of Health Services. To the extent that feasibility constraints require reductions in ground rents so that affordable housing can be provided within Marina del Rey, funding for these services and other County purposes will also be reduced.
- *The Most Expensive Solution, with the Highest Subsidy Per Unit, Is Not Necessarily the Best or Only Outcome Under the Mello Act.* Experts concur that the cost of producing housing, as well as market prices, are extraordinarily high at this time, particularly in high-end luxury projects such as those proposed for the Marina. If each individual project has a maximum amount of subsidy it can afford to provide to affordable housing before the project becomes infeasible – even if that subsidy amount can be increased by reducing the County’s ground rent and long-term income from the project – the Mello Act clearly permits the County to consider whether it is always preferable to expend those dollars on-site at very large subsidy per unit costs, or whether other alternatives should be available.
- *The Supply Of Affordable Housing Units Should Be Expanded, and the Cost Per Unit Must Be Considered.* The County’s review of Mello Act compliance must be guided by a clear statement of its public policy goals. We believe that appropriate goals are to maximize the production of affordable housing within the Coastal Zone and three miles thereof – as provided by the statute – without reducing the County’s ability to generate funding for County-wide public benefit programs. The County may also consider policies that improve housing opportunities for moderate income households, which may include teachers, police officers, health professionals and other public employees.
- *Off-Site Compliance Both Within and Near the Marina, As Well As In-Lieu Fees, Are Essential Options, Particularly in Cooperation with the County and Non-Profit Housing Developers.* Some affordable housing advocates are appropriately

concerned about the ability to achieve production of off-site housing units and the ability to utilize in-lieu fees for housing production. We believe the County can assist with initiatives to facilitate identification of land for off-site affordable units, both within the Marina and nearby, as well as expediting entitlements for such projects. Indeed, some non-profit housing developers may be able to utilize the additional funding and assistance which Mello-based contributions can provide for affordable housing projects which are otherwise viable but need additional funding. Guidance by the Task Force to assist in land identification (both vacant or under-utilized parcels as well as sites that can be reused to allow for highest and best use), entitlement expediting and cooperation with non-profit housing developers could greatly increase the pace and number of affordable units that could be produced.

- *The Coastal Act and Complications with Density Bonuses are Legitimate Considerations in Determining Feasibility for Mello Act Compliance.* Housing developments within the Coastal Zone are subject to a number of restrictions and requirements that must be considered when analyzing the feasibility of on-site affordable housing. In some situations, density bonuses may be legally obtainable but practically of limited economic benefit, for example if they mandate subterranean parking (difficult in high water table areas like the Marina) or more expensive construction types. Existing LCP provisions for housing can be difficult to change. The California Environmental Quality Act, the Coastal Act, state and local general plan requirements and other regulations all place legal, political and practical burdens on projects which must be considered under the Act's definition of infeasibility.
- *All Stakeholders, Including Financing Sources and Housing Developers, Need Certainty as to the Cost of Mello Act Compliance.* The existing policy has the very positive consequence of creating certainty for the development community as to what requirements will apply to future projects. Without such certainty, projects may fail with prolonged predevelopment expenses and difficulty in securing the necessary financial backing to build more housing. By defining feasibility in terms of whether a project can be completed in a "successful" manner within a "reasonable" period of time, the Mello Act acknowledges the need for certainty and predictability. Without a clear policy, housing production will be stifled. Certainty and predictability can be achieved by retaining an in lieu fee provision or establishing a running inventory of acceptable alternative sites and projects.
- *The County Must Clearly Define Feasibility Criteria.* Prolonged debate over a specific project's feasibility can cause developers and housing advocates alike to spend inordinate resources on lengthy reports, dueling experts and litigation, while the housing crisis continues to deepen. The County has discretion to limit debate by adopting a uniform methodology for making feasibility determinations based upon objective parameters and establishing a clear process for staff review.

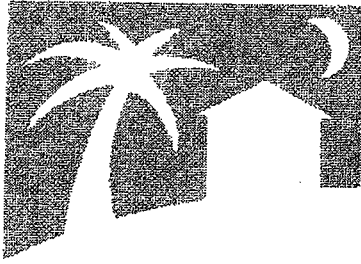
### III. CONCLUSION

The County's existing policy correctly reflects its discretion under the Mello Act, which does not establish a "one size fits all" mechanism for providing affordable housing within

**LATHAM & WATKINS LLP.**

the Coastal Zone. Rather, jurisdictions are permitted to adopt policies and ordinances that are specifically tailored to address local needs. As Marina landowner and lessor, the County can appropriately balance its need to maximize revenues for County programs with providing affordable housing within the Coastal Zone and permit flexibility in its compliance programs to maximize the supply of affordable housing without limiting the new market rate supply.

We look forward to discussing these issues further with you.



## Venice Community Housing Corporation

720 Rose Avenue, Venice, California 90291-2710

Tel: (310) 399-4100 Fax: (310) 399-1130

Web: [www.VCHCorp.org](http://www.VCHCorp.org)

August 30, 2006

Supervisor Gloria Molina  
Supervisor Yvonne Burke  
Supervisor Zev Yaroslavsky  
Supervisor Don Knabe  
Supervisor Michael Antonovich  
856 Kenneth Hahn Hall of Administration  
500 W. Temple Street  
Los Angeles, CA 90012

Re: Proposed Marina Del Rey Affordable Housing Policy

Dear Honorable Supervisors:

This letter is written on behalf of the Venice Community Housing Corporation to urge that the Board of Supervisors reject the proposed Marina Del Rey Affordable Housing Policy ("Policy") presented to the Board of Supervisors on or about June 22, 2006 and direct the Chief Administrative Officer to substantially revise the policy so as to promote rather than frustrate the production of affordable housing within the Marina.

The Venice Community Housing Corporation (VCHC) is a community based, nonprofit housing and community development corporation dedicated to the creation and preservation of housing affordable to low income people in Venice and surrounding neighborhoods. Since its formation in 1988 we have constructed, acquired, rehabilitated, and own and operate 161 units of affordable housing in Venice and Mar Vista. 75% of our residents have incomes less than 50% of the median. Since 1995 we have developed other programs and assets that address critical needs of our community including a comprehensive youth development program for "at risk" and gang affiliated local youth, after school programs for children 6-12 years old, and the first and only infant-toddler child care center in Venice that is free to low income families. VCHC also contracts with the City of Los Angeles to provide free home repairs to low income senior and disabled homeowners living on the west side through the City's Handyworker program.

As Venice residents and as nonprofit, affordable housing developers, we at VCHC are distressed that the proposed Policy does not reflect the intent of the Mello Act and other state and local laws which clearly establish the importance of the preservation and creation of affordable housing in the Coastal Zone and throughout the County.

At the most basic level, the question must be asked. What is the Policy trying to accomplish? If it is to interpret the Mello Act in a way that will minimize the obligation to provide affordable housing within the Marina and maximize the profit that developers will reap from leasing and developing this public land, the Policy succeeds admirably. If, however, the County is trying to advance public policy that recognizes that "there exists within the urban and rural areas of the state a serious shortage of decent, safe, and sanitary housing which persons and families of low or moderate income can afford, and consequently a pressing and urgent need for the preservation and expansion of the low- and moderate-income housing supply", the proposed Policy is wholly inadequate.

The following comments focus on only the major weaknesses of the proposed Policy, including in some instances, direct disobedience to the requirements of the Mello Act.

Concerning the replacement of affordable units demolished within the coastal zone, the proposed Policy seeks to exempt from replacement all of the following;

1. Units occupied by resident managers, regardless of whether the manager is, as is often the case, also a tenant ;
2. Units occupied by students regardless of their economic status if their parents have higher than moderate incomes and claim them as dependents on their income tax return or act as guarantors on their lease agreements;
3. All units vacant at the time "term sheet" negotiations between the developer and the County commence;

There is nothing in the Mello Act that authorizes these exemptions. There is no public policy that is furthered by allowing these units not to be included in the analysis.

Notwithstanding the intention of the Mello Act to preserve existing affordable housing within the Coastal Zone and the intention of state density bonus law to increase the supply of affordable housing by permitting additional market rate units to developers who will include affordable units within their developments, the proposed Policy permits the developer to satisfy both requirements with the same affordable units. In other words, "double dipping" to maximize the developers profit and minimize the number of affordable units required. Clearly such a result frustrates the public policies underlying both state laws. In fact, the Mello Act expressly provides that the law "is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government as may otherwise be provided by law, to require or provide low - or moderate-income housing within the coastal zone which is in addition to the requirements of this section."

The proposed Policy provides that replacement units are required to remain affordable for only 30 years. There is nothing in the Mello Act that authorizes such a limitation and there is no public policy that is furthered by limiting affordability for only 30 years. On the contrary, the affordable housing crisis and the inability of the market to provide affordable housing demands that replacement units be affordable in perpetuity or at least as long as the land lease agreements between the developers and the County are in effect.

Finally, the proposed Policy would allow the replacement requirement to be satisfied not only by construction of new replacement units, but also by "substantial rehabilitation of existing units. In other words and in effect, the Policy would allow for the actual diminution of the supply of affordable housing if it would advantage the developer. Nothing in the Mello Act can be construed to authorize such an outcome, one that would again be contrary to the unambiguous intent of the Mello Act and other state and local law.



The proposed Policy is equally flawed in its provisions regarding the inclusion of affordable units in new construction projects in the Marina.

The proposed Policy does not require that any affordable units be included no matter how big the new housing development or how many units are included. It only sets as a "goal" the inclusion of 5% very low or 10% low income units. In order to determine the actual number, if any, the proposed Policy provides for a feasibility analysis on a "case by case" basis based on information provided by the developer! This is the same kind of "policy" that resulted in the inclusion of no affordable units in any new construction project in the Coastal Zone of the City of Los Angeles for years. The reason is obvious. A developer's financial feasibility analysis rests on assumptions he makes and those assumptions can be manipulated to his benefit. Those assumptions may be buried in the proforma. They may not be reasonable and may not even be disclosed. The developer's numbers in every instance will demonstrate that it will not be feasible to include any affordable units in the pending project. And it will be virtually impossible for an administrative body to prove otherwise. After all, what is a fair return on investment? Who can say with certainty what construction costs will be next year or the year after, or the market value of condominiums years into the future?

Recognizing the inherent problem with a "case by case" analysis based on information provided by developers, the City of Los Angeles finally did its own assessment and made a categorical determination that for all new construction projects of 10 units or more it is feasible for the developers to make 20% of the units affordable to low income people or 10% of the units affordable to very low income people. And that provision of the Los Angeles City policy is a requirement not a "goal". The County should do no less.

As with the Policy for replacement units, the Policy for inclusionary units provides that the "goal" may be satisfied by rehabilitating existing units rather than creating new units, allows for double counting of the same affordable units to satisfy both Mello and Density Bonus law, and limits the affordability restriction to 30 years. And for the same reasons, the Policy as proposed is fatally flawed.

Finally, in determining the size of the new development for purposes of calculating the percentage of affordable units to be included, the Policy directs that wherever an existing housing development is demolished to make way for the new construction, the number of units to be demolished is subtracted from the number to be built. So, for example, if a 20 unit building is demolished to build a new 20 unit building, none of the units need be affordable. There is nothing in the Mello Act that would justify or permit such an outcome. It is, like so many other provisions of the proposed Policy, designed circumvent the clear intention of the law and to minimize the developer's obligation to provide desperately needed affordable housing on the Westside of Los Angeles.

Venice Community Housing Corporation urges that the Board of Supervisors determine that the Policy as proposed is unacceptable and direct that the Chief Administrative Officer revise the Policy to further the important goal of expanding the amount of affordable housing in the Marina by making the following revisions:

Regarding replacement units:

1. eliminate the exemption for managers' units unless the unit is provided solely as an incident of employment;
2. eliminate the exemption for units occupied by students;

3. eliminate the exemption for vacant units;
4. eliminate the double dipping provision that permits a developer to count required affordable replacement units as affordable units for purposes of density bonus calculation;
5. require replacement units to be affordable in perpetuity;
6. require new units when replacement units are required and forbid developers from satisfying their obligation by refurbishing existing units.

Regarding inclusionary affordable units in new construction:

1. make a categorical finding that it is feasible to include affordable units in all new construction projects of 10 units or more;
2. require (not set as a "goal") that 20% of the units be affordable to low income people or 10% of the units be affordable to very low income people;
3. eliminate the double counting provision re Mello and Density Bonus law;
4. require that the units be affordable in perpetuity;
5. require new units and not the refurbishment of existing units
6. do not permit units to be demolished to be subtracted from units to be constructed in determining the number of affordable units to be included in the new development.

Thank you for your consideration of these comments. We look forward to working with the County to craft a Policy that accurately reflects the intent of the Mello Act, furthers the underlying public policies that it was intended to address and truly responds to the housing crisis that exists in Los Angeles County today.

Very truly yours,

Steve Clare  
Executive Director

**ARMBRUSTER & GOLDSMITH LLP**

LAND USE ENTITLEMENTS ■ MUNICIPAL ADVOCACY

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October 25, 2006

VIA E-MAIL

Mr. Santos Kreimann  
Chief Administrative Officer  
County of Los Angeles  
Hall of Administration, Room 754  
500 W. Temple Street  
Los Angeles, California 90012

Re: Proposed Marina del Rey Affordable Housing Policy

Dear Mr. Kreimann:

As you know, we represent Legacy Partners ("Legacy"), which is seeking to develop a 526 unit apartment units, 174 boat slips and a restored wetland park and public boats slips on Marina del Rey Parcels 10R, FF and 9U. We are writing on behalf of our client to provide additional comments on the draft Marina del Rey Affordable Housing Policy ("Draft Policy") released by the County Task Force in June, 2006.

As a general matter, Legacy supports the Draft Policy and commends the Task Force for its efforts. However, in light of the unique environmental, social and economic considerations factors that make the development of affordable housing in the Marina difficult, we encourage the County to consider a more flexible approach to Mello Act compliance, as outlined in Estella de Llanos' October 20, 2006 letter to you on behalf of Lyon Capital Ventures. We are in agreement with all of the points in Ms. de Llanos' letter and believe that providing developers with additional options will result in the development of more affordable housing at lower levels of rent concessions by the County.

The City of Los Angeles has recently prepared a draft ordinance to replace its outdated Interim Administrative Procedures for Implementing the Mello Act. Among other things, this draft ordinance exempts new apartment projects from Mello Act compliance because the City found that high cost of development makes the provision of affordable units categorically infeasible. This finding is based on an expert study by Hamilton, Rabinovitz & Alschuler. The draft City ordinance allows condominium developers to provide the required affordable unit off-site or pay an in lieu fee that could be leveraged to provide more affordable units than could be achieved through an on-site inclusionary requirement. We believe that County should consider the City's approach to these issues in developing its own Mello Act policy.

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Mr. Santos Kreimann

October 25, 2006

Page 2

We are pleased that the Draft Policy recognizes the County's unique position as land owner and calls for rent concession to enable applicants to meet Mello Act inclusionary housing requirements. However, we are seeking clarification of the statement in the Executive Summary that rent concessions shall not be available with respect to replacement housing obligations under the Act. We take this sentence to mean that the County will not provide rent concessions solely for replacement units, but that the provision of replacement units will be a factor in calculating the level of rent concessions for inclusionary unit. The Mello Act provides that the inclusionary unit only need to be provided where feasible. Obviously, the economic cost of providing the replacement units, as well as the inclusionary units, is a critical factor in determining feasibility.

Thank you for your consideration. We would be pleased to provide any additional information that you or the Task Force may require.

Very truly yours,



Dale J. Goldsmith

cc: Honorable Board of Supervisors

Julie Moore

Larry Hafetz, Esq.

Tom Faughnan

Legacy Partners

**Marina del Rey  
Lessees Association**

C/o Mr. Timothy C. Riley, Executive Director  
8537 Wakefield Avenue  
Panorama City, CA 91402  
Telephone: 818-891-0495; FAX: 818-891-1056

October 5, 2006

Mr. Santos Kreimann  
Chief Administrative Office  
754 Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Santos:

The Marina del Rey Lessees Association wants to take this opportunity to thank the members of the County Task Force on Affordable Housing for their thoughtful work on revisions to the County's Affordable Housing Policy for Marina del Rey.

We were pleased to participate in the Public Forum on this important issue. After further consideration, the Association would like to propose that the Task Force also reconsider provision of an *in lieu* fee as an option for inclusion as an alternative to the provision of replacement and inclusionary affordable units on-site or off-site by the developer.


The Mello Act contains a provision for an *in lieu* fee. Existing County policy also called for the utilization of an *in lieu* fee. Many jurisdictions include payment of an *in lieu* fee in their own local affordable housing ordinances.

The *in lieu* fee approach deserves consideration because provision of such a fee would stimulate the production of a larger number of affordable units outside the Coastal Zone than would be financially possible either on-site within Marina del Rey or could be provided by the developer off-site within three miles of the Coastal Zone.

Each developer and each project is unique, and we believe that the *in lieu* fee would be an appropriate approach to the provision of affordable housing, and that payment of an *in lieu* fee is consistent with the Mello Act.

Thank you for your consideration.

Sincerely,



David O. Levine  
President, Marina del Rey Lessees Association

Cc: Members, Los Angeles County Board of Supervisors

Marina del Rey Affordable Housing Policy  
Statement by David Levine, President of the Marina Lessees Association

Good evening, Task Force members. My name is David Levine. I will be addressing you this evening as current President of the Marina del Rey Lessees' Association and as a representative of the ownership of the Del Rey Shores Apartments.

Your Task Force is to be congratulated for formulating a Draft Affordable Housing Policy for Marina del Rey which is in all ways compliant with the Mello Act, yet which provides the County of Los Angeles and its lessees in Marina del Rey a flexible framework within which diverse projects can achieve such compliance. Our recent experience with the myriad Mello Act compliance issues affecting the redevelopment of the Del Rey Shores apartments has shown us that the Mello Act is careful to give local jurisdictions wide discretion in complying with affordable housing requirements. As a result, no two jurisdictions in California comply with the Act in the same way. It is important to emphasize that the Mello Act does not prescribe only one means to comply with the Act, and that multiple unique projects can differ in many critical elements and still all be consistent with the Mello Act.

This is particularly important with regards to articulation of an affordable housing policy in Marina del Rey, which is owned by the County of Los Angeles. Marina del Rey is the largest income-producing asset owned by the people of the County of Los Angeles, all 13 million of them. While some existing Marina tenants may wish to keep their rents at relatively low levels, there are many hundreds of thousands of County residents who rely on vital County social services who will benefit from the substantial County revenue that will be generated by redevelopment of the Marina's aging apartment complexes. In fact, over 50% of the rent generated by the leaseholds in the Marina to the County is transferred to the County's Department of Health Services, so the County has a special social interest in generating increased revenue from the Marina. It is simply a fact of life that for every two dollars in rent foregone by the County to subsidize individual affordable units in the Marina, there will be over one dollar of lost revenue denied to support health services for millions of County residents from Long Beach to Lancaster, from Mar Vista to ~~Claremont~~ <sup>Monrovia</sup>.

Moreover, the housing shortage in Los Angeles County extends above and beyond the availability of units to low-income individuals and families to all rental units available at many different levels of affordability. Therefore, the Affordable Housing Policy for Marina del Rey must provide the County of

Los Angeles and its lessees with the flexibility to stimulate the construction of market-rate units as well as the provision of affordable units. Unless investors are assured of market-rate returns, redevelopment of the Marina will not take place. Meanwhile, the Marina's aging apartment stock will continue to deteriorate, without the addition of badly-needed market-rate apartments or the contribution of affordable housing units.

It is therefore incumbent upon all parties within the County family and within the Marina del Rey community to bear in mind that development in the Marina must strike a sensitive balance between often-competing interests and values. The social good of providing affordable housing must be weighed against the social cost of subsidizing affordable housing. The disruption new construction causes must be weighed against the improved quality of life the community will enjoy from renovated and new residential and commercial developments in the neighborhood. The Board of Supervisors has the right, indeed the responsibility, to frame the affordable housing policy discussion in this larger context.

Consistent with Mello Act requirements, the Draft Policy:

- a. Provides a clearly defined process for determining, on a case-by-case basis for each project, whether it is feasible for



Marina developers to provide affordable units on-site in new residential projects;

- b. Establishes a credible tenant income survey process, based upon the precedents and practices of other jurisdictions, for determining existing “replacement units” per the Mello Act, and contains clear procedures for the identification, development and maintenance of replacement units within new projects, or off-site, if it is determined, on a case-by-case basis for each project, that on-site provision of replacement units is not feasible;
- c. Contains a straightforward, Mello Act-consistent “inclusionary” affordable housing program for new residential projects in the Marina: i.e., at least 5% of the net new incremental units must be designated to very low-income households, or at least 10% of the net new incremental units must be designated to low-income households; and,
- d. Provides Marina developers sufficient flexibility to construct the “inclusionary” affordable units off-site, within the Coastal Zone or within three miles thereof, if it is determined, based on the results of a feasibility analysis to be performed on a case-by-case basis for each project, that providing the inclusionary affordable units on-site is infeasible.

We live in a less than perfect world. Perhaps none of us will, or can, be happy with each and every provision of the Policy. But we all have a vested interest in making this policy work, in increasing the total housing stock, in providing more affordable housing, in keeping redevelopment projects viable, in realizing the redevelopment envisioned in the Coastal Commission-certified Local Coastal Program, in generating much-needed support for a range of vital County social services. We believe that the draft Affordable Housing Policy under discussion tonight achieves a balance which is consistent and compliant with the Mello Act.

###

## **ATTORNEY CLIENT PRIVILEGED DISCUSSION DRAFT**

**County Mello Policy**  
***September 7, 2006***

- My name is Peter Zak, speaking on behalf of the Villa Venetia project. We are working hard on this project and are very proud of our top-quality design which we presented to the DCB last week. We absolutely recognize the importance of affordable housing in this region. This isn't lip service; we take responsibility to help to find solutions and in fact several of us have worked on other market rate projects that included affordable housing. We will draw upon that commitment and experience at Villa Venetia. We support the proposed draft Policy because we believe it seeks to provide the greatest net benefit to the community, including affordable housing advocates, because it allows for flexibility and a case-by-case analysis of the facts presented by each project in determining the best way to support affordable unit production.

- We understand that some tenants who currently live here in the Marina, including in our existing units, don't want change because they hope that without redevelopment, the status quo and existing rents will continue. However the Marina's experience with redevelopment projects is that they do create income-restricted units as well as new, high-quality housing stock to replace the older existing units which date from the 60s and 70s here in the Marina. The five projects approved in recent years have led to 179 income-restricted affordable units, and the several projects which are now in the approval process -- including our Villa Venetia project -- are all planning to support affordable housing. The current draft Policy offers a fair and predictable process for determining feasibility and correctly recognizes that off-site alternatives may be appropriate depending on the facts.
- The way to create more deed-restricted affordable housing is to allow redevelopment. In fact, the only deed-restricted units that exist in the Marina today exist because of redevelopment.

Additional redevelopment will create new deed-restricted units, while providing the additional benefits of increased lease revenues to the County, new or improved public access and coastal recreational opportunities, improved infrastructure, consistent with County Marina and Coastal Commission policies.

- The County is doing the right thing by balancing competing goals and supporting redevelopment with appropriate consideration of affordable housing. We support those efforts and look forward to continuing toward our goal of maximizing the number of units we can feasibly support while still ensuring an appropriate return to the County and to justify our investment in new public infrastructure and environmental benefits for the Marina and all of its stakeholders. We think the current draft Policy will allow that positive outcome and allow the County to continue to generate leasehold revenues from the Marina to support other County social programs. We support the flexibility of the proposed Policy.
- Thank you.

## **ATTACHMENT 3**

### **Task Force Response to Comments**

11-15-06

## Topical Issues & Responses

(Includes comments received during oral testimony at the 9/7/06 community meeting as well as comments received via written correspondence)

### General Policy Issues

#### G-1 Mello Act Intent

##### Issue:

- In public comments, concerns have been raised that the County has failed to address the intent of the Mello Act.
- It was further asserted that the proposed policy does not adequately provide affordable housing for appropriate income levels.
- Members of the public also noted that the draft policy fails to adequately contribute to the creation of affordable units during the time of a great housing shortage.
- Lastly, it was alleged that the draft policy is minimally fulfilling its obligation to provide affordable housing and is maximizing profit to the developer. Specifically, it was alleged that the policy affords a developer an extremely small obligation when he or she utilizes the 5% very low provision coupled with a density bonus, essentially double counting affordable units. *(Also see response to I-1 and I-3).*

##### Response:

- Intent: The draft policy is in compliance with the requirements of the Mello Act. The draft policy provides for the preservation of existing affordable housing supplies (replacement units) and supports the creation of new affordable housing units (inclusionary units). The County, in its unique position as land owner, must balance the provision of affordable housing with the ability to generate revenue from Marina ground leases which further serves to benefit County public programs.
- Affordable housing for appropriate income levels: The Mello Act allows the County to provide affordable housing to low and moderate income persons and families in the Coastal Zone. The Act applies to "persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code." Section 50093 defines persons or families of low or moderate income as, "persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937." The County appropriately utilizes the 2006 State income limits published by the California Department of Housing and Community Development.
- New units: The draft policy serves to create new affordable units based upon the inclusionary housing obligations outlined for developers and, as such, will add to the affordable housing stock within the Coastal Zone. Within the unincorporated area as a whole, the County continues to work diligently to address the current housing shortage. Most notably, the County's Density Bonus Ordinance was approved by the Board of Supervisors on August 8, 2006. Additionally, the County has made other housing related accomplishments such as the adoption of the Green Line Transit Oriented District (TOD), completion of the Green Line TOD Infill Estimation Study, commencement of the County's Urban Infill Estimation Project,

implementation of the County's Infill Sites Utilization Program, and formation of the Special Needs Housing Alliance.

- The County asserts that it has followed the guidelines of the Mello Act to preserve and create affordable units in addition to building in elements of flexibility for project review so that developers are well equipped to provide affordable units. *(Also see response to I-1 and I-3)*

## **G-2 Off-Site locations**

### **Issue:**

- **Potential for Stigmatization:** In public comments, concerns have been raised that the draft policy creates the potential for developers to locate and group together affordable units by allowing developers the choice of whether to provide replacement units (and inclusionary units if proven infeasible on-site) either on-site or elsewhere within the Coastal Zone. It was further alleged that this creates the potential for stigmatization and ghettoization of affordable units and contributes to the gentrification process.
- **Off-Site = More Affordable Units:** Conversely, other members of the public noted that off-site options may be more desirable in that they have the potential to create a greater number of affordable units than on-site projects. They further asserted that allowing developers to create off-site units can leverage low income tax credits and other financing alternatives that are less likely to be available to projects with a large percentage of market-rate units.
- **Off-site Benefits:** Lastly, in written testimony, it was noted that off-site projects that are 100% or substantially affordable can be well designed and equipped with amenities that are specific to residents' needs such as day care centers and computer rooms.

### **Response:**

- **Stigmatization:** Affordable housing developments are not, by definition, low-quality housing. Off-site projects that are 100 percent or substantially affordable can be beautifully designed and can feature amenities tailored to meet resident's needs that may not otherwise be included in a luxury project geared towards affluent professionals or retirees (for example, special amenities for families such as day care facilities or playground facilities).
- **Off-site Benefits – a greater number of units:** The County believes that by providing this flexibility to developers with ranked preferences for off-site locations, a greater number of affordable units will be made possible than if the County were to solely require units to be replaced and produced on-site.

## **G-3 Rehabilitation**

### **Issue:**

- In public comments, concerns have been raised that the draft policy allows for off-site units to be either new construction or rehabilitation of existing units. It was further argued that the Mello Act does not allow for rehabilitation of existing units as no net new units would be created.
- Members of the public also pointed out that it is far less expensive to subsidize and rehabilitate an existing unit rather than to build a new unit either on or off-site alleging that developers have an economic incentive to rehabilitate existing stock rather than create net new units.

### **Response**

- The main goal of the Mello Act is to preserve, increase, and/or improve the affordable housing stock in the Coastal Zone. Allowing the rehabilitation of an existing unit, and then income-restricting that unit, furthers that goal. Even if the target unit was previously occupied by a low- or moderate-income person, by rehabilitating and income restricting the unit, the unit not only improves in quality, it is guaranteed to be income-restricted for no less than 30 years. The



task force concluded that these improved attributes for the affordable housing unit stock in the Marina are consistent with and further the goals of the Mello Act.

#### **G-4 Duration of affordability**

##### **Issue:**

- In public comments, concerns have been raised that the Mello Act does not authorize a time limit on affordability and that as leases end, affordable units will disappear.

##### **Response:**

- The Mello Act does not require affordability covenants and does not require affordability to be maintained for any set period of time. Nonetheless, the draft policy requires applicants to record a covenant guaranteeing that the relevant affordable income and rent requirements for each replacement and inclusionary unit will be observed for at least 30 years. A 30-year term is commonly applied in the affordable housing context and is consistent with conventional financing practices. Moreover, a 30-year term is what government agencies and organizations commonly use for determining long-term affordability. Finally, the density bonus law also requires income-restricted units to be restricted for 30 years (or longer depending on the requirements of the financing program) for purposes of obtaining a density bonus.

#### **G-5 Allowing rental units in for-sale projects**

##### **Issue:**

- In public comments, concerns have been raised that developers may choose to build affordable rental units over affordable ownership units and should be required to provide additional affordable units as a result of the reduced cost. It was further argued that the policy allows developers to satisfy their replacement and inclusionary Mello Act obligations by providing rental units, irrespective of whether the new development is comprised of rental units, ownership units or a mix of both. Lastly, members of the public pointed out that because it is cheaper to build and subsidize rental units, there is an incentive to build affordable rentals.

##### **Response:**

- Regarding objections raised over the provision in the draft policy that allows an applicant to set aside inclusionary rental units for the low-income component of the project when some or all of the market rate units in the project are being offered for sale, we believe the provision in the draft policy is legally permissible.
- The Mello Act is silent as to the type of unit (for-rent or for-sale) that must be provided under the statute. Moreover, for a particular project, the County may make findings to support allowing affordable for-rent units in a for-sale market rate project. For example, the County may determine that very low income households may have difficulty qualifying for mortgage financing and that preserving rental opportunities for these individuals is preferable. For this reason we believe the provision in the draft policy on this issue is reasonable.

#### **G-6 Location of units within a project – stigmatization**

##### **Issue:**

- In public comments, concerns have been raised that affordable rental unit tenants will be stigmatized in a building with ownership units.

##### **Response:**

- The basis for these concerns regarding the draft policy's provisions that relate to the location of the income-restricted units is unclear.
- The draft policy provides that "the inclusionary units must be reasonably dispersed throughout the rental unit component of the project, and the units sizes and design must be comparable to

the market rate rental units included in the project.” Moreover, the draft policy requires the applicant to submit an Affordable Housing Plan prior to obtaining any building permits. The Affordable Housing Plan will allow the Department of Regional Planning to review where the affordable units will be located in the building and insure that they are not improperly segregated or unduly relegated to the least desirable units.

## **G-7 Monitoring and enforcement**

### **Issue:**

- **Failure to Complete within Three Years:** In public comments, concerns have been raised that the draft policy does not address the penalty fees associated with a failure to complete affordable units within three years.
- **Infeasibility Claims:** Members of the public further noted that the draft policy does not address how aggressive it will be in challenging infeasibility claims.

### **Response:**

- Failure to complete the affordable units within three years will result in the certificate of occupancy being withheld for the market rate units until the affordable units are complete. Without the certificate of occupancy, the developer will not be able to rent the market rate units. Further, the Department of Regional Planning could issue a notice of violation for failure to comply with the affordable housing covenant, which could result in the levying of an administrative fine and non-compliance fee against the developer, and the possible prosecution of the developer by the District Attorney for committing a misdemeanor. Additionally, the Board could initiate a revocation/modification proceeding to review the developer's coastal development permit, which could result in a significant modification or a complete revocation of the developer's entitlements for failing to comply. Lastly, the County, as lessor, could find the developer in breach of the lease, as compliance with the affordable housing requirements will be a lease obligation.
- With the proposed elimination of the in-lieu fee program, greater emphasis will be placed on the requirement to physically provide affordable housing on-site, within the Coastal Zone or within the extended Coastal Zone. Further, since the County as the landowner can contribute to the feasibility of a project through rent concessions, it is in the interest of the County to question infeasibility claims in order to minimize the need for the County to make concessions. A claim of infeasibility must be supported by substantial evidence in order to withstand legal challenge, and therefore, the County must satisfy itself that a claim of infeasibility meets the legal standard.

## **G-8 Feasibility – definition & analysis**

### **Issue:**

- **Application of Feasible Units:** In public comments, concerns have been raised that the policy's lack of clarity regarding feasibility allows developers the option to choose fewer units than are actually proven feasible. For example, if 10 units are proven feasible, a developer may choose between 0 and 10 units because the policy does not specify that he or she is required to produce the maximum number of units feasible.
- **Threshold level:** With respect to feasibility analyses, in public comments it was pointed out that the draft policy does not set a threshold level for return and does not provide a rationale for explaining why this is the minimum level demanded in the market.
- **Measurable return:** With respect to feasibility analysis, members of the public also pointed out that the draft policy does not specify a calculation for measurable return and further alleged that this lack of specificity allows for the potential for manipulation of feasibility determination.

- **Apartment sales adjustment:** Lastly, in public comments, it was alleged that although the proposed policy allows for an adjustment of up to 200 basis points from the capitalization rate for apartment sales, the draft policy provides no grounds for selecting a number 0 – 200

**Response:**

- The Mello Act defines “feasible” in a manner that considers four factors that encompass a broad range of experience. Accordingly, the Mello Act focuses on whether a project can be accomplished successfully in a reasonable period of time, taking into account those factors, not just the economics of a project. Based on this broad, qualitative definition, and because of the uniqueness of projects within the Marina, the task force concluded that it was preferable to provide a basic methodology in the draft policy for determining feasibility, rather than providing a specific formula or threshold.
- The draft policy is not silent on a project’s feasibility. It requires the applicant to submit detailed information to the County for purposes of determining a project’s feasibility. This information must include:
  1. An evaluation of the impacts created by available incentives (such as density bonuses and available state and local assistance programs);
  2. An estimate of the developer’s return that would be generated by the project, which will be compared to a feasibility factor equal to the capitalization rate for apartment sales in Los Angeles County plus up to 200 basis points; and
  3. An evaluation of whether the project can be successfully completed within a reasonable period of time, taking into account economic, environmental, social, and technical factors.

This approach is consistent with the requirements of the Mello Act.

**G-9 In lieu fee**

**Issue:**

- In public comments, concerns have been raised that the draft policy poses no alternative for inclusionary or replacement affordable units.

**Response:**

- The Mello Act does not require local jurisdictions to grant in-lieu fees for the provision of replacement housing units or inclusionary housing units.
- Pursuant to the Mello Act, in-lieu fees cannot be offered as an alternative to providing replacement housing units and inclusionary housing units. The Mello Act sets parameters for allowing in-lieu fees for replacement housing units, which exempts applicants from the requirements to provide on-site or off-site units, but only when it is infeasible to do so. The Mello Act is silent on in-lieu fees for inclusionary housing units, which suggests that the in-lieu fees would only apply when the provision of inclusionary housing units is infeasible. Although the in-lieu fee traditionally functions as an *alternative* to providing affordable units, in the context of the Mello Act, the parameters set forth suggest that in-lieu fees, if a local jurisdiction chooses to grant them, can only be applied when it is infeasible to provide on-site or off-site affordable units.
- In addition, the in-lieu fee does not guarantee that the replacement or inclusionary housing units will be built at the same time as the market-rate units.
- In the event that the Board of Supervisors chooses to include an in-lieu fee program in the County policy, the County will need to undergo a technical study to determine an appropriate fee that would result in the same number of replacement and inclusionary units, if not more, that the applicant is required to provide pursuant to the Mello Act.

## **G-10 Stakeholder Input**

### **Issue:**

- In public comments, it was suggested that in formulating and finalizing the proposed policy, the County should make a concerted effort to solicit input from a range of key players including: stakeholders, housing developers, affordable housing advocates, non-profit housing developers, and investors. Members of the public noted that advice from the varying sources may provide insider perspectives on relative information such as the mechanics of affordable housing, compliance options, and rates of return, etc.

### **Response:**

- The County has received input from stakeholders, housing developers, affordable housing advocates, and non-profit housing developers via oral testimony at the September 7, 2006 community meeting (60-65 people in attendance) and via written correspondence. The County believes that the input received was comprehensive and representative. It was announced at the community meeting that all interested parties are welcome to continue to submit written correspondence to the County as well as provide testimony at the upcoming Board of Supervisors hearing.

## **G-11 Community Outreach for the Draft Policy**

### **Issue:**

- **Notification:** In public comments, concerns have been raised that the County did not provide enough notification of the community meeting to the Marina del Rey residents. Members of the public further pointed out, that renters, in particular, did not receive special notice.
- **Access to Information:** Members of the also noted that the County needs to provide the public with better access to information regarding County resources.
- **Outreach / Workshops:** Lastly, members of the public asserted that the County has not made efforts to broadly reach out to the community to assess the needs of the residents. Additionally, members of the public noted that the County needs to provide more educational workshops to the community with regard to regional planning issues – including affordable housing. Residents noted that the County needs to, “look out for the little guy.”

### **Response:**

- **Notification and Access to Information:** Prior to the September 7, 2006 community meeting, an announcement was run in the local newspaper, *The Argonaut*, and the draft policy had been made available on the website of the Department of Beaches and Harbors. In addition, meeting notices were mailed to a comprehensive list of individuals and groups that the Department of Beaches and Harbors and Regional Planning identified as having an interest in the Marina del Rey affordable housing policy.
- **Outreach / Workshops:** The County’s Marina del Rey affordable housing task force was established by a Board of Supervisors’ motion and based on the timeframe that the Board has given the task force to complete its work, it is not possible to conduct additional outreach efforts and still meet current deadlines.

## **G-12 Composition of the County’s Affordable Housing Task Force**

### **Issue:**

- During public comments, a request was made to add a community resident to the affordable housing task force. The concern by opponents of the draft policy is that the residents’ views on matters of future growth and affordable housing are not being represented in the drafting of the policy.

Response:

- The task force was established by a Board motion, therefore changes to its composition are within the discretion of the Board.

**G-13 Jurisdictional Boundaries: Unincorporated Los Angeles County**

Issue:

- During public comments, Marina del Rey residents expressed concern that the County has separate rules for residents of unincorporated Los Angeles County versus residents of the City of Los Angeles and the City of Santa Monica.

Response:

- The City of Santa Monica, the City of Los Angeles, and unincorporated Los Angeles County have differing regulations for their residents because all three areas are separate jurisdictions.
- The Marina del Rey Affordable Housing Policy only applies to housing developments that are proposed in Marina del Rey, which is in the unincorporated area. Unincorporated Los Angeles County is made up of those communities and areas that are outside the jurisdictional boundaries of incorporated cities. As such, they are not serviced by an incorporated city. County government provides basic municipal services for these areas.
- Also see response to I-1.

**G-14 Ownership of public land**

Issue:

- During public comments, Marina del Rey residents expressed concern as to why the County is promoting the creation of ownership units on public land owned by the County.

Response:

- There are a few units in the Marina within one development which were converted in the past to condominium subleases/long-term residential subleases. These units can be "sold" much like any other condominium, though the County still receives a form of rent and participates in any sales. They are not true ownership units because the subleases cannot extend past the term of the Master Lease.

## **Replacement Unit Issues**

### **R-1 Exemptions**

#### **Issue:**

- In public comments, concerns have been raised that the Mello Act does not authorize the exemptions of units occupied by:
  1. resident managers and sublessees,
  2. units occupied by students whose parents claim them as dependents, or whose parents guarantee the rent, even if the student pays the rent themselves,
  3. units vacant at the time the "term sheet" negotiations commence.

#### **Response:**

- 1. Resident managers and sublessees: In determining an applicant's replacement unit obligation, the draft policy excludes from consideration those units occupied by sub-tenants not named on the lease, and those units occupied by resident managers. In public comments, objections were raised that these exclusions are improper, but we believe they are legally permissible.
- The Mello Act does not address this specific issue and provides no guidance as to how to survey the existing units in a building to determine if they are occupied by persons or families of low or moderate income. The task force concluded that, regarding sub-tenants, for purposes of conducting the survey and as a matter of fairness, it was appropriate to include for consideration only those occupants named on the original lease between the landlord and the original tenant(s), and family members/domestic partners of those original tenants. The landlord has a contractual relationship only with persons named on the lease, and could most efficiently conduct the tenant survey only as to those persons. Moreover, it is entirely possible that the landlord may have no knowledge of sub-tenants living in the unit nor approve of such occupancy, and therefore should not be required to provide an income-restricted unit based on the income level of those sub-tenants.
- As for resident managers, they are generally not considered "tenants" in the landlord/tenant context, but instead, they are classified as employees. Hence, the task force concluded that it was appropriate to exclude from consideration the resident manager units because the focus of the Mello Act is replacing units for low or moderate income occupants that are tenants, not employees.
- 2. Student exemption:

The task force concluded that it was reasonable not to solely consider the student's income for purposes of determining replacement unit eligibility. Students who are financially dependent on their parents but are seeking higher education are not generally reflective of the low or moderate-income individual that the Mello Act is intended to protect. Many, if not most, of these students will have substantially greater earning capacity when they complete school so the task force found that considering their income alone while in school would not be warranted. Instead, the task force decided that it was appropriate to aggregate the student's income with his/her parents' income to determine replacement unit eligibility.
- 3. Vacant units: Vacant units would not be required to be replaced under the Mello Act as there is no low or moderate income person or family residing in the unit. A safeguard against abuse exists in the Mello Act, which requires an affordable replacement unit for each vacancy resulting from an eviction from that dwelling unit within one year prior to the filing of an application to convert or demolish the unit and if the eviction was for the purpose of avoiding statutory requirements.

**R-2 Determining household income / Comparison of actual monthly rent w/affordable monthly rental rate**

**Issue:**

- In public comments, it was pointed out that the draft policy allows the County to compare actual monthly rent with an affordable monthly rental rate if a tenant fails to provide income information. Challengers of the policy alleged that this is not permissible under the Mello Act as the Act requires examination of tenant incomes, not rental rates.

**Response:**

- The Mello Act does not provide specificity regarding assessing replacement unit obligations when tenants fail to provide income information. Without income survey information provided by a tenant, and in the absence of tenant income information from applicant files (no more than two years old), the County believes it is performing its due diligence and making a best faith effort to assess replacement unit obligations by analyzing the previous year's monthly rent compared to the average affordable monthly rental rates for the same year.

**R-3 Determining household income / household size**

**Issue**

- In public comments, concerns have been raised that the draft policy makes conclusions regarding the incomes of tenants living in units based upon monthly rental rates without giving consideration to number of tenants living in a unit. Members of the public noted that this is problematic, as tenants may be "doubled-up" or overcrowded in a unit to afford the monthly rental rate.

**Response:**

- When tenants fail to provide the County with information requested by the income survey, the County then seeks information from tenant application files, and if income information is not found in applicant files, *only then* does the County make an affordable unit obligation determination based on an analysis of monthly rental rates. Information from applicant files, if found, may or may not include a current listing of the number of residents and their relationships to each other within an apartment.
- In an effort to consider the number of residents within an apartment, the County has designed the income survey with provisions to respond to the Mello Act's intent to provide affordable housing for all residents in need. The Act states, "In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income."
- The County's income survey specifically requests that tenants disclose information regarding the names of all persons living in the apartment unit as well as their relationships.

**R-4 Roommate independence – Policy is not specific enough**

**Issue**

- In public comments, it was pointed out that the draft policy requires roommates to be unrelated and financially independent of each other in order for their incomes to be assessed separately. It was alleged that this provision is overly broad and doesn't address the following set of situations:
  1. Related individuals: siblings who are financially independent of each other
  2. Unrelated individuals who share a bank account or own real property together
  3. Domestic Partners

4. Individuals requiring live-in caregivers who may be disqualified based on the income of their caregiver.

Response:

- Related individuals/Unrelated roommates: The task force concluded that it was appropriate to aggregate the incomes of unmarried but related roommates because related individuals sharing the same household often share a number of financial obligations, including the rent. Moreover, the task force also found that if unrelated roommates shared financial assets such as real property or a bank account, it was appropriate to aggregate their incomes for the same reason, which is that they often will share financial responsibilities such as the rent.
- The task force's goal was to establish clear guidance for conducting the tenant surveys to ensure that they would be conducted efficiently and accurately. While there are a number of interpersonal relationships that might indicate shared financial responsibilities, the task force concluded that, aside from the typical marital relationship, the most easily verifiable relationships are student/parent and domestic partner relationships. The draft policy thus evaluates the verifiable indicia of these relationships to determine whether the aggregation of income is appropriate for replacement housing purposes.

**R-5 Replacement bedrooms (Like for Like-bedrooms)**

Issue

- In public comments, objections were raised that it is improper for the draft policy to provide for the replacement of bedrooms rather than whole units where one occupant is determined to be of low or moderate income.

Response:

- The Mello Act provides that if “an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income.” However, the Mello Act does not establish a formula for calculating how the requirements apply to portions of units. To ensure that replacement obligations for portions of units are met, the draft policy looks at the number of qualifying occupants in relation to the number of bedrooms, to determine whether any person or family in that unit qualifies as a low or moderate income person or family. Thus, if two unrelated persons occupy a two-bedroom unit and one occupant is a person of low or moderate income and the other person is not, the draft policy requires that a one-bedroom unit be replaced rather than a two-bedroom unit. We believe that this is a reasonable interpretation of the Mello Act.

**R-6 Like-for-like replacement units by income level**

Issue

- In public comments, objections were raised that the draft policy would allow low income units to be replaced with moderate income units rather than like-for-like replacement.

Response:

- The Mello Act states that units occupied by low or moderate income persons or families may not be converted or demolished “unless provision has been made for the replacement of those dwelling units with units for persons or families of low or moderate income.” The Mello Act does not expressly require that provision must be made for the replacement of those dwelling units with units for persons and families *of the same income level as the units being converted or demolished*.
- The replacement unit requirement of the Mello Act is not intended to provide replacement housing for the existing occupants upon whom the determination is based, but rather, to



preserve the existing affordable housing stock. Also, by basing the replacement requirement on income levels of the occupants rather than the rent level charged, the replacement requirement of the Mello Act has the potential to create income-restricted units out of market rate units that happen to be occupied by persons of low or moderate income.

- Taking these factors into consideration, the draft policy provides that replacement units be set aside as very low, low, or moderate income rental units based upon comparison of the monthly rent at the commencement of term sheet negotiations for the project to the affordable housing rental rates published annually by the Community Development Commission (“CDC”). Thus, market rate units that require replacement because they are occupied by persons or families of low or moderate income would be designated for replacement as moderate income rental units, and units where the rent matched the moderate, low, or very low income rental housing rates of the CDC, would be designated as moderate, low, or very low income rental units, respectively. We believe this is a reasonable interpretation of the Mello Act, as it fulfills the requirement that units occupied by persons or families of low or moderate income be replaced with income-restricted units.

#### **R-7 Sensitivity regarding income information**

##### **Issue**

- In public comments, residents expressed concern over the release of confidential income information on the income survey. Their concern focused on the potential for the income information to be misused on the part of the lessee against tenants.

##### **Response:**

- The Los Angeles County Community Development Commission (CDC) will collect tenant income information and maintain it in the strictest confidence. The draft policy states, “An income survey to be completed by each family and individual occupant to determine the applicant’s replacement housing obligation for Mello Act Compliance...will be used exclusively to determine replacement housing eligibility.”
- The “Coastal Housing Program Tenant Questionnaire” states, “All financial information that you provide will remain confidential.”

#### **R-8 Income survey assumptions regarding standards of living**

##### **Issue**

- In public comments, concerns have been raised that in assessing eligibility for affordable units, the draft policy lacks specified standards for making the determination for qualification. Concerns were raised that predetermined government criteria for how people should be using their money will be applied.

##### **Response:**

- In determining eligibility for replacement units, the County relies upon the State’s definition of persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code.” 50093 defines persons or families of low or moderate income as, “persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.” In addition, the County utilizes the 2006 State income limits published by the California Department of Housing and Community Development.

**R-9 Displacement – The County has not made efforts to accommodate displaced residents**

**Issue**

- In public comments, concerns have been raised that the draft policy has not addressed how to accommodate residents that are displaced from the Marina del Rey area when they can no longer afford to live in the area.

**Response:**

- The County is not bound by law to offer relocation assistance for the development/redevelopment of the Marina by private lessees.

**Inclusionary Unit Issues**

**I-1 The policy's percentages (5% very low, 10% low) are too low**

**Issue**

- In public comments, concerns have been raised that the current draft policy reduces the number of affordable units than are currently allowed by 50%.
- Members of the public further noted that the City of Los Angeles has offered greater percentages.
- Members of the public also purported that the County should require all apartment complexes to have affordable units, whether the buildings are new or not.

**Response**

- The draft policy requires that each residential project set aside a percentage of the new units as affordable units, subject to an analysis of feasibility on a case-by-case basis. The draft policy recommends a County goal of either five (5) percent very low income units or ten (10) percent low income units. The County could require a higher or lower percentage of inclusionary units based on the feasibility analysis. In public comments, objections have been raised that the draft policy reduces the total number of units to which the inclusionary calculation applies, since the current Marina affordable housing policy requires 10 percent low income units, and the draft policy requires only 5 percent very low income units.
- The Mello Act does not set forth any percentages, minimum number of units, or other formulas for complying with the inclusionary requirement. The Mello Act provides that: "New housing developments constructed within the Coastal Zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in section 50093 of the Health and Safety Code." Likewise, the Mello Act does not dictate that the required housing be set aside for a particular income category or all income categories include in the definition of "low or moderate income" under the Health and Safety Code (those categories are very low, low, and moderate income).
- The draft policy has not eliminated the goal of 10 percent low income units, rather it adds an alternative goal of 5 percent very low income units. The addition of the proposed goals of 5 percent very low income units provides consistency with the State's current density bonus provisions which require that mandatory development benefits and concessions be provided to any developer who is willing to set aside 5 percent of the project's units for very low income persons.
- In a legal opinion prepared by the State Department of Housing and Community Development ("HCD") for implementation of the Mello Act, HCD advises that local governments may either conduct a feasibility analysis on a case-by-case basis for individual projects or conduct a

comprehensive study to establish set inclusionary housing requirements in advance. Given the small number of residential projects anticipated in the Marina in the near future, and the cost and consumption of time of conducting a full feasibility analysis prior to adoption of the draft policy, the task force is recommending a feasibility analysis for each project, coupled with goals that provide developers with some indication of the County's objectives. We believe this is legally defensible and consistent with the Mello Act's provisions regarding feasibility.

- In public comments, objections were raised that the affordable housing policy for the Marina should mirror that of the City of Los Angeles, which requires 10 percent very low income inclusionary units or 20 percent low income inclusionary units. The City of Los Angeles' policy, however, is an interim policy adopted pursuant to a settlement agreement entered into by and between the City and the Housing Advocates. The City has recently completed a comprehensive feasibility analysis for implementation of its permanent coastal affordable housing ordinance. The City's draft ordinance, which will cover Pacific Palisades, the Venice-Playa del Rey area, and the San Pedro-Harbor area, proposes a set requirement of 10 percent very low income inclusionary units or the payment of in-lieu fees specific to each coastal community. The City's coastal communities generally consist of lower-density neighborhoods that are inherently different than higher-density Marina del Rey.

## **I-2 Method of calculating inclusionary obligation - subtraction**

### **Issue:**

- In public comments, concerns have been raised that the draft policy affords a developer the ability to calculate his or her inclusionary obligation by subtracting the number of existing units from the number of new units and that this is not supported by the Mello Act.

### **Response:**

- The draft policy requires the percentage of affordable inclusionary units to be calculated based on the net incremental new units to be constructed or converted on the project site. The draft policy separately requires the replacement of existing units occupied by persons or families of low or moderate income that are converted or demolished. In public comments, concerns were raised that the draft policy is flawed because the calculation of inclusionary units subtracts out the existing units;.
- The Mello Act does not set forth any formula for complying with the inclusionary requirement. We believe the draft policy is consistent with the Mello Act, which creates separate obligations for units that are converted or demolished and for units that are new housing. Establishment of a base for calculating the number of inclusionary units is a matter of policy. The County's existing policy requires that 10 percent of all the units constructed /reconstructed on-site be income-restricted. The City of Los Angeles' interim policy provides that the percentage inclusionary requirements are based on the total number of new-reconstructed units less any required replacement units. We believe that a base that consists of all units constructed, all units less the number of replacement units, or the net incremental new units only, are all legally defensible, so long as inclusionary units are provided where feasible.

## **I-3 Density bonus**

### **Issue:**

- In public comments, it was pointed out that the proposed policy allows a developer to calculate his or her inclusionary obligation based upon the pre-density bonus number of units in a development and it was alleged that this is impermissible under the Mello Act.
- Conversely, other members of the public noted that the proposed policy permits developers to take advantage of the full menu of incentives required under state law.

Response:

- The County believes that the proposed policy as drafted to include the pre-density bonus calculation of Mello units best responds to providing incentives that improve feasibility and the ultimate generation of new affordable units.
- The Mello Act permits the application of density bonuses and allows the County the flexibility in enabling the inclusionary unit calculation based on pre-density bonus numbers. In subsection (d) relating to inclusionary units, the Mello Act states, "In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing or required applications, and the waiver of appropriate fees."

**I-4 Rent concessions**

Issue:

- In public comments, it was pointed out that rent concessions only relate to inclusionary units and not replacement units

Response:

- The County may offer rent concessions as one item in menu of incentives designed to improve feasibility for developers in providing affordable units. This would provide for a true regulatory incentive that positively affects a project's feasibility. In subsection (d) relating to inclusionary units, the Mello Act states, "In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing or required applications, and the waiver of appropriate fees."
- With regard to replacement units, the Mello Act does not address the provision of additional incentives. Therefore, the County has the discretion to not offer rent concessions for replacement units which sends the strong message to developers that they are responsible for providing required replacement units on their own, or with other forms of available assistance.

**I-5 Required vs. setting a goal**

Issue:

- In public comments, concerns have been raised that the draft policy is too flexible in that it does not require that affordable units be included in new developments and merely sets as a "goal" for the inclusion of 5% very low or 10% low income units.

Response:

- The Mello Act requires that new housing developments within the Coastal Zone shall, where feasible, provide housing units for persons and families of low or moderate income. If it is not feasible to provide these units on-site, the Mello Act requires that the developer provide affordable units within the Coastal Zone or within the extended Coastal Zone, if feasible to do so. The Mello Act does not require local governments to set a percentage requirement. In a legal opinion prepared by the State Department of Housing and Community Development ("HCD") for implementation of the Mello Act, HCD advises that local governments may either conduct a feasibility analysis on a case-by-case basis for individual projects or conduct a comprehensive study to establish set inclusionary housing requirements in advance. Given the small number of residential projects anticipated in the Marina in the near future, and the cost and consumption of time of conducting a full feasibility analysis prior to adoption of the draft policy, the task force has recommended a feasibility analysis for each project, coupled with goals that provide developers with some indication of the County's objectives. We believe this is legally defensible and consistent with the Mello Act's provisions regarding feasibility.

**I-6 Rent adjustments – The policy contains no detail regarding case-by-case adjustments**

**Issue:**

- In public comments, it was noted that under the proposed policy, rent adjustments for inclusionary units are subject to negotiation on a case-by-case basis with the County. Members of the public alleged that the policy lacks specificity regarding such adjustments.

**Response:**

- In considering rent adjustments (concessions) on a case-by-case basis, the County takes into account its own resources, funding requirements and community needs. Only after balancing its own needs, may the County consider the various project specific elements of each case and evaluate the prospect of providing rent adjustments. Because the County is constantly assessing its financial position and services provided to the community, the County must consider projects on a case by case basis and make decisions with respect to rent concessions accordingly. As such, it is not appropriate to provide further specificity regarding rent adjustments in the draft policy.

**I-7 The draft policy does not call for a specific cap on the ground lease reduction**

**Issue:**

- In public comments, concerns have been raised that the proposed policy states that the County is willing to reduce their ground lease on inclusionary units, though does not provide specificity regarding a percentage or maximum. It was further asserted that if there is no maximum level provided, then a feasibility analysis cannot be established.

**Response:**

- The ground lease reduction cannot be specified because it is contingent upon the availability of funds. The revenue from County leases can vary, and are either allocated for specific government purposes, or placed into the County General fund.
- According to the Mello Act, the County is required to “offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees” in order to assist in the provision of inclusionary housing units. Because of the unique circumstances in which the County is the landowner, “other incentives,” could include ground lease reductions, if and when feasible for the County.
- The extent to which the provision of inclusionary housing units is feasible can initially be determined independent of the maximum percentage of ground lease reductions or any additional incentives and concessions that the County is able to provide. The applicant could also factor in the provision of density bonuses and any source of funding or financing for affordable housing that the applicant seeks to determine feasibility. In the event that the provision of inclusionary housing units is determined to be infeasible on-site, or off-site within the Coastal Zone or within three miles thereof, the County will work with the applicant on a case-by-case basis to consider additional incentives and concessions, including ground lease reductions, to assist in contributing to the feasibility of providing inclusionary housing units.

## **ATTACHMENT 4**

### **Mello Act Policy Options Comparison Table**

# MELLO ACT POLICY OPTIONS

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Issue	Mello Act	Draft County Policy	Policy Options <sup>1</sup>	Comments
<b>Determination of feasibility</b>	<p>The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible....In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income....</p> <p><i>Government Code 65590 (b)</i></p> <p>New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income....</p> <p><i>Government Code 65590 (d)</i></p> <p>Any determination of the "feasibility" of an action required to be taken by this section shall be reviewable pursuant to the provisions of Section 1094.5 of the Code of Civil Procedure.</p> <p><i>Government Code 65590(e)</i></p> <p>"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors.</p> <p><i>Government Code 65590(g)(3)</i></p>	<p>The project feasibility analysis must include:</p> <p>An evaluation of impacts created by incentives available to the applicant such as density bonuses; development standards relief; and available state and local assistance programs....</p> <p>An estimate of the developer's return that would be generated by the project....</p> <p>An evaluation of whether or not the project can be successfully completed within a reasonable period of time, taking into account economic, environmental, social and technical factors.</p> <p><i>Draft Policy Pages 7,9</i></p>	<p><input type="checkbox"/> 1. <b>Determine feasibility on a case-by-case basis.</b></p> <p><input type="checkbox"/> 2. Conduct an upfront technical study to determine requirements.</p>	<p>The advantage of determining the feasibility of providing replacement and inclusionary units on a case-by-case basis is that it considers the uniqueness of sites and market conditions over time. However, the disadvantage is that it does not provide certainty, and the deliberations over feasibility could be subject to delays in the entitlement process.</p> <p>The advantage of completing an upfront technical feasibility study is that it provides clarity in how feasibility is determined. The disadvantage is that it may be more appropriate to determine feasibility, according to the circumstances of the project, including market conditions at the time in which the project is proposed. In addition, the upfront technical study will may be expensive and time-consuming to produce. As there are only four housing developments coming forward for entitlements in the remainder of second generation Marina redevelopment, there are concerns that a technical feasibility study would not be worthwhile.</p>
<b>Determination of inclusionary housing units</b>	<p>New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income....</p> <p><i>Government Code 65590 (d)</i></p>	<p>The applicant must set aside a percentage of the new units as affordable units, subject to an analysis of the project's feasibility on a case-by-case basis. The County's goal is to have each applicant set-aside either 5% of the units for very-low income households, or 10% of the units for low income households.</p> <p>...</p> <p><i>Draft Policy Page 8</i></p>	<p><input type="checkbox"/> 1. <b>On a case-by-case basis, determine the feasible number of inclusionary housing units that the applicant must provide, with percentage goals of 5% very low income households or 10% low income households.</b></p> <p><input type="checkbox"/> 2. Provide alternative inclusionary percentage goals, such as:</p>	<p>The advantage of a case-by-case determination is the flexibility to consider the uniqueness of sites and market conditions over time.</p> <p>Setting percentage goals for inclusionary units informs lessees of the County's affordable housing expectations, with some flexibility for unique circumstances and changing market conditions. The draft policy goals have been set based on the qualifying thresholds set by State Density Bonus Law, which offers 20% density bonuses for setting aside either 5% very low income or 10% lower income units within a project.</p> <p>The advantage of conducting an upfront technical feasibility study is that it provides a sound, technical basis for imposing appropriate and feasible inclusionary housing requirements, as well as certainty to lessees. However, conducting a technical feasibility study may be expensive and time-consuming, and lessees would still be permitted to</p>

<sup>1</sup> All options in bold are proposed in the current draft policy.

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Issue	Mello Act	Draft County Policy	Policy Options <sup>1</sup>	Comments
<b>Determination of inclusionary housing units (continued)</b>			<input type="checkbox"/> 10% very low income households <input type="checkbox"/> 20% low income households <input type="checkbox"/> _____% very low, low or moderate income <input type="checkbox"/> 3. Conduct a technical feasibility study upfront to determine the appropriate percentage requirement for the inclusionary housing obligation.	challenge the inclusionary housing requirements based upon feasibility on a case-by-case basis. As it is anticipated that there are only four housing developments coming forward for entitlements in the remainder of second generation Marina redevelopment, there are concerns that a technical feasibility study would not be worthwhile.
<b>Determination of inclusionary housing units— Calculation</b>	New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income...  <i>Government Code 65590 (d)</i>	The inclusionary housing obligation will be imposed separately from any replacement housing obligations being applied to the project.  ... The on-site inclusionary housing obligation will be calculated based upon the net incremental new units (fractional units under 0.5 are to be rounded down) to be constructed or converted in the following manner....  <i>Draft Policy Page 8</i>	<input type="checkbox"/> 1. Calculate the inclusionary housing units based upon the net incremental new units. <input type="checkbox"/> 2. Provide alternative calculation method, such as: <input type="checkbox"/> Exclude only required affordable replacement units from inclusionary obligation. <input type="checkbox"/> Require inclusionary obligation and credit qualifying affordable replacement units toward meeting an overall percentage goal that is calculated over the total project.	The exclusion of existing units, prior to demolition or conversion, from the calculation of inclusionary units follows the structure of the Mello Act, which treats the replacement of affordable housing units separately from the inclusion of affordable housing units in new development.  Consideration of alternative calculation methods will result in an increased number of affordable units. However, alternative calculation methods that increase the number of inclusionary units will also result in higher costs to lessees and the County, and may increase the likelihood of on-site infeasibility and may encourage lessees to seek off-site placement instead.
<b>Determination of replacement housing units— Income targeting</b>	The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income... shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. ... The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible.... In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall	Replacement units must be set aside as very low, low or moderate income rental units based on comparison of the monthly rent at the commencement of term sheet negotiations for the unit to be demolished or converted to the affordable housing rental rates published annually by the CDC.	<input type="checkbox"/> 1. Units occupied by low-or-moderate income persons or families replaced with units set aside for low-or-moderate income persons or families based upon comparison of monthly rent. <input type="checkbox"/> 2. Like-for-Like Replacement: Units occupied by very low income households replaced by units set-	Compliance with the replacement unit requirements of the Mello Act will result in the replacement of market rate units with income-restricted units because the determination of replacement is based upon income of the occupants, not on the rent charged to those occupants. While the draft policy requires the designation of replacement units based on income of occupants as required by the Mello Act, it permits the designation of income level restriction for the replacement unit based upon the rent charged for the unit to be replaced. The advantage of the rent comparison is that it allows for flexibility in providing replacement units for a range of low and moderate income individuals and families, while potentially ameliorating some of the financial effects of converting market rate units to affordable units. The disadvantage, however, is that lessees will most likely opt for moderate income restricted units.



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<b>Determination of replacement housing units—Income targeting (continued)</b>	apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income....  <i>Government Code 65590 (b)</i>	<i>Draft Policy Page 7</i>	aside for very low income households (30% AMI-50% AMI); units occupied by lower income households replaced by units set-aside for lower income households (50%AMI-80%AMI); units occupied moderate income households replaced by units set-aside for moderate income households (80%AMI-120%AMI).  <input type="checkbox"/> 3. Flexible Like-for-Like Replacement: Moderate income units may not replace lower or very low income units, but lower or very low income units may be replaced by either lower or very low income units.	The advantage of like-for-like replacement is that it will provide affordable units that correspond with the income levels of the individuals and families who are displaced. However, the disadvantage of like-for-like is that it is not as flexible, and can result in additional costs.
<b>Determination of replacement housing units—Number of bedrooms</b>	The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income...shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income.... The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible....In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income....  <i>Government Code 65590 (b)</i>	The applicant is required to replace each unit that is determined to be occupied by low or moderate persons or families on a one-for-one basis (per number of bedrooms)....  Applicants must provide the identified replacement housing units on-site or elsewhere within the Coastal Zone unless the applicant can demonstrate that such placement is not feasible.  <i>Draft Policy Pages 6,7</i>	<input type="checkbox"/> 1. One-for-One bedroom replacement.  <input type="checkbox"/> 2. One-for-One unit replacement.	The advantage of one-for-one bedroom replacement is that it corresponds more accurately with replacement of the unit according to the affordable household. However, the disadvantage is that it does not necessarily replace the unit that was occupied by at least one person or family of low or moderate income.
<b>Determination of replacement housing units—Exceptions for resident management employees</b>	Not specified.	Units occupied by resident management employees will not be considered in determining the applicant's replacement housing obligation for purposes of Mello Act compliance (with a limit of one management unit per seventy-five residential units).  <i>Draft Policy Page 4</i>	<input type="checkbox"/> 1. Exclude units occupied by resident management employees from replacement housing obligation with a limit of one for each 75 units.  <input type="checkbox"/> 2. Include units occupied by resident management employees who meet income requirements.	Resident management employee units were excluded in the draft policy because they are not tenants, they are employees. The advantage of excluding units occupied by resident management employees is that it does not burden lessees with replacing their management units with affordable units which may not then be useable by later resident management employees who are not income-qualified, thus requiring a further reduction of market rate units to house those employees. The disadvantage, however, is that a resident management employee occupying the unit may fit the income level that requires replacement, even if the resident management employee is technically considered an employee and not a tenant.

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<b>Determination of replacement housing units—Exceptions for students</b>	Not specified.	Students that are claimed as a dependent on their parent's federal tax return or whose parent(s) are guarantors on the rental/lease agreement must include parental household income information on the tenant income survey to determine affordable housing eligibility of their unit for the purposes of Mello Act compliance.  <i>Draft Policy Page 4</i>	<input type="checkbox"/> 1. Consider income of parents where students are claimed as dependents or where rent is guaranteed by parents.  <input type="checkbox"/> 2. Consider income of students only.	Considering parental income will provide a more accurate accounting of the income eligibility of students in order to avoid overstating the number of replacement units. However, the disadvantage is that the process to verify and monitor student status requires additional resources from the County.
<b>Determination of replacement housing units—Exceptions for sub-lessees</b>	Not specified.	[...] Financial information obtained from resident(s) subleasing directly from the legal occupant, but not named on the original lease/rental agreement (i.e., non-family roommates), will not be considered in determining the applicant's replacement housing obligation for the purposes of the Mello Act.  <i>Draft Policy Page 4</i>	<input type="checkbox"/> 1. Exclude sub-lessees and sub-tenants who are not legal occupants in determining the replacement housing obligation.  <input type="checkbox"/> 2. Include information on sub-lessees or sub-tenants in determining the replacement housing obligation.	The advantage of excluding sub-lessees and sub-tenants is that it simplifies the income survey process, and addresses replacement unit obligations only for those who have a contractual right to occupy the unit. However, the disadvantage is that the incomes associated with the individuals named on the lease may not necessarily reflect the true income status of the occupants living in the unit.
<b>Determination of replacement housing units—Roommates</b>	In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income....  <i>Government Code 65590 (b)</i>	Unmarried and unrelated tenants who wish to be treated as separate individuals rather than as a household must declare under penalty of perjury the following:  They are not registered partners;  Neither party claims employment benefits received by the other party (i.e. health insurance, etc.);  They do not share a bank account together, and  They do not own real property together.  <i>Draft Policy Pages 5,6</i>	<input type="checkbox"/> 1. Allow unmarried and unrelated tenants to be treated as separate individuals.  <input type="checkbox"/> 2. Treat related, financially non-dependent individuals independently.	The draft policy treats occupants of a unit as a household for the purpose of determining replacement units, unless they affirmatively declare that they meet the requirements for being treated as individuals. The advantage of this requirement is that it avoids having to designate a replacement unit for a person who meets the income requirements as an individual, but is being supported financially by another occupant, who is not their spouse or blood relative, and who does not meet the income requirements. The requirement also allows persons in non-traditional relationships to be treated as households if they so wish, without having to make an affirmative declaration regarding the status of their relationship with the other occupants. However, the disadvantage is that in a few instances, it may exclude certain persons from consideration as individuals (i.e., financially independent siblings living together).
<b>Determination of replacement housing units—When income information is not available</b>	Not specified.	Affordable housing eligibility for units with tenants that do not respond to the income survey will be determined using tenant income information no more than two years old contained in the applicant's files, or in the absence of such income information, using the average of the previous year's monthly rent compared to the average affordable monthly rental	<input type="checkbox"/> 1. Additional steps of inquiry, such as using rents, etc. to exercise due diligence. When the tenant does not respond to the survey and income information is not available, deem unit market-rate.  <input type="checkbox"/> 2. Additional steps of inquiry, such as	The advantage of adding additional steps of inquiry is that it provides due diligence to collect the income information necessary to determine the number of replacement units. The disadvantage is that using rent as a proxy to determine income, in particular, has the potential to be inaccurate, as an individual or family of low or moderate income could be paying market rate rent.  The advantage of deeming a unit occupied by low or moderate income persons or families as a replacement unit, when the income information is not available, is that it provides an incentive to the lessees to provide the information requests and ensures that units will be

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		<p>rates for the same year as noted below:</p> <p>If the average monthly rent for the unit is less than or equal to the average monthly affordable rent for a low income household, the unit will be considered to be occupied by a low income person or family.</p> <p>If the average monthly rent for the unit is less than or equal to the average monthly affordable rent for a moderate income household, the unit will be considered to be occupied by a moderate income person or family.</p> <p>If the average monthly rent for the unit is greater than the average monthly affordable rent for a moderate income household, the unit will be deemed a market-rate unit.</p> <p><i>Draft Policy Page 5</i></p>	<p>using rents, etc. to exercise due diligence. When the tenant does not respond to the survey and the income information is not available, deem the unit occupied by low or moderate income persons or families.</p>	<p>replaced regardless of whether or not the information is provided. However, the disadvantage of deeming a unit affordable is that it places a burden on the lessee to provide additional affordable units that may not accurately reflect the number of low and moderate income households occupying units.</p>
<p><b>Off-site replacement and inclusionary housing units</b></p>	<p>[REPLACEMENT UNITS]</p> <p>....Replacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished. .... if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone. ....</p> <p><i>Government Code 65590 (b)</i></p> <p>[INCLUSIONARY UNITS]</p> <p>....Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location</p>	<p>[REPLACEMENT UNITS]</p> <p>If on-site or Coastal Zone replacement is determined to be infeasible, the units shall be provided at an off-site location in the following priority order:</p> <p>Within three miles of the Coastal Zone in the unincorporated territory of Los Angeles County; or</p> <p>Within three miles of the Coastal Zone in the incorporated territory of Los Angeles County.</p> <p>Off-site units can be new construction or the substantial rehabilitation of existing</p>	<p><input type="checkbox"/> 1. When permitted by the Mello Act, allow for the provision of off-site replacement or inclusionary units within the Coastal Zone or within three miles of the Coastal Zone in either the unincorporated or incorporated areas of Los Angeles County, with priority given to the unincorporated areas.</p> <p><input type="checkbox"/> 2. When permitted by the Mello Act, require the provision of off-site replacement or inclusionary units within the Coastal Zone or within three miles of the Coastal Zone in the unincorporated areas</p>	<p>The advantage of allowing the provision of off-site affordable units within other jurisdictions, when infeasible to do so within the unincorporated area, is that it creates additional opportunities to provide affordable housing. Vacant land and sites of sufficient size with zoning and general plan land use policy designations that are suitable for the development of affordable housing—which is generally medium to high density—within the unincorporated communities of the coastal zone (Marina del Rey, Catalina Island, Santa Monica Mountains) are scarce. However, one disadvantage is that it may be difficult to monitor and enforce affordable units located within other jurisdictions. In cases where the off-site units are provided within the Coastal Zone, the project would be subject to another jurisdiction's Mello Act requirements, which raises the concern over double-counting when meeting separate requirements. Furthermore, another disadvantage is that the provision of off-site units within another jurisdiction would not count the units toward meeting the goals of the County's Housing Element.</p>

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	within the same city or county, either within the coastal zone or within three miles thereof. <i>Government Code 65590 (d)</i>	units. The obligation to construct or rehabilitate affordable replacement housing units off-site will be the sole responsibility of the applicant. <i>Draft Policy Pages 7, 8</i>  [INCLUSIONARY UNITS]  If on-site development of the inclusionary housing units is determined to be infeasible based upon the project feasibility analysis, the units must be provided at an off-site location in the following priority order:  In the Coastal Zone within the unincorporated territory of Los Angeles County;  Within three miles of the Coastal Zone in the unincorporated territory of Los Angeles County;  In the Coastal Zone within the incorporated territory of Los Angeles County; or  Within three miles of the Coastal Zone in the incorporated territory of Las County.  The off-site inclusionary units can be new construction or substantial rehabilitation. The obligation to construct or rehabilitate affordable housing inclusionary units off-site will be the sole responsibility of the applicant.  <i>Draft Policy Pages 9, 10</i>	only.	
Off-site replacement and inclusionary housing units (continued)				
Term of affordability	Not specified.	[REPLACEMENT UNITS] The applicant shall record a covenant guaranteeing that the relevant affordable	<input type="checkbox"/> 1. At least 30 years, to be consistent with the duration of affordability required for density bonuses and	The advantage of having a long duration of affordability is to maximize the effectiveness of setting aside units for low or moderate income households. However, the longer the duration of affordability for replacement and inclusionary units, will increase the likelihood of financial infeasibility and increase the loss of County revenue from the project.

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		<p>Income and rent requirements for each replacement unit will be observed for at least 30 years from the issuance of the Certificate of Occupancy.</p> <p><i>Draft Policy Page 6</i></p> <p><b>[REPLACEMENT AND INCLUSIONARY UNITS]</b></p> <p>The applicant shall record a covenant guaranteeing that the relevant affordable income and rent requirements for each replacement and inclusionary unit will be observed for at least 30 years from the issuance of the Certificate of Occupancy.</p> <p><i>Draft Policy Page 10</i></p>	<p><b>other conventional financing.</b></p> <p><input type="checkbox"/> 2. At least 55 years, to be consistent with affordability terms for major affordable housing funding sources, including Low Income Housing Tax Credits and HOME funds.</p> <p><input type="checkbox"/> 3. For the duration of each County lease.</p> <p><input type="checkbox"/> 4. Less than 30 years.</p> <p><input type="checkbox"/> 5. In perpetuity.</p>	
<b>Housing tenure</b>	Not specified.	<p><b>Ownership Units</b></p> <p>If an applicant is proposing to develop a project that includes rental and ownership units, the replacement and inclusionary units may all be provided in the rental component;</p> <p>If an applicant is proposing to develop a 100% ownership unit project, the applicant may provide rental units on-site to fulfill the replacement and inclusionary obligations.</p> <p><i>Draft Policy Page 11</i></p>	<p><input type="checkbox"/> 1. Allow replacement and inclusionary housing units the flexibility to be offered as for rent or for sale.</p> <p><input type="checkbox"/> 2. Require the housing tenure for replacement housing units to be comparable to the housing tenure of the unit for which the replacement unit determination is made.</p> <p><input type="checkbox"/> 3. Require onsite replacement and inclusionary housing units of comparable housing tenure to market-rate units.</p>	<p>The advantage of allowing flexibility in housing tenure is that it may improve project feasibility and maximize the number of affordable units provided. The disadvantage is that this flexibility may allow an "access" or fair housing problem to be created when a blend of tenure types are allowed within the overall development. As Marina del Rey is almost exclusively a rental market, however, the application of this provision will be the exception, not the rule.</p>
<b>Housing tenure (Continued)</b>				
<b>Local incentives/concessions</b>	<p><b>[INCLUSIONARY UNITS]</b></p> <p>....In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees.</p> <p><i>Government Code 65500 (d)</i></p>	<p><b>[REPLACEMENT UNITS]</b></p> <p>The project feasibility analysis must include:</p> <p>An evaluation of impacts created by incentives available to the applicant such as density bonuses, development standards relief, and available state and local assistance programs. (Note: County rent concessions will not be made available to the applicant to comply with</p>	<p><input type="checkbox"/> 1. Provide incentives and concessions for inclusionary housing units, only, on a case-by-case basis.</p> <p><input type="checkbox"/> 2. Provide incentives and concessions for inclusionary and replacement housing units, on a case-by-case basis.</p>	<p>The advantage of providing additional local incentives for the provision of replacement units as well as inclusionary units, based on availability, is that it can help contribute to making the affordable units feasible. However, the disadvantages are that it involves a significant financial commitment from the County and that there is an opportunity cost to the funds that could be used for other public purposes, including the provision of affordable housing elsewhere.</p> <p>The advantage of specifying the incentives and concessions that the County is willing to give is that it provides certainty to the lessees. The disadvantage, however, is that each development is unique and subject to changing market conditions which require flexibility in negotiations to ensure that affordable housing requirements are balanced with County revenue goals.</p>

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Issue	Mello Act	Draft County Policy	Policy Options <sup>1</sup>	Comments
		<p>the applicant's replacement housing obligation pursuant to the Mello Act)....</p> <p><i>Draft Policy Page 7</i></p> <p>[INCLUSIONARY UNITS]</p> <p>The project feasibility analysis must include:</p> <p>An evaluation of impacts created by incentives available to the applicant such as density bonuses; development standards relief; and available state and local assistance programs. (Note: County rent adjustments to comply with the inclusionary housing requirement are subject to negotiation on a case-by-case basis)....</p> <p><i>Draft Policy Page 9</i></p>	<p><input type="checkbox"/> 3. Provide a list of specific incentives and concessions for inclusionary units only.</p> <p><input type="checkbox"/> 4. Provide a list of specific incentives and concessions for replacement and inclusionary housing units.</p>	
<p><b>In-lieu fee</b></p>	<p>[REPLACEMENT UNITS]</p> <p>...The requirements of this subdivision for replacement dwelling units shall not apply to the following types of conversion or demolition unless the local government determines that replacement of all or any portion of the converted or demolished dwelling units is feasible, in which event replacement dwelling units shall be required:</p> <p>... The conversion or demolition of a residential structure located within the jurisdiction of a local government which has established a procedure under which an applicant for conversion or demolition will pay an in-lieu fee into a program, the various provisions of which, in aggregate, will result in the replacement of the number of dwelling units which would otherwise have been required....</p> <p><i>Government Code 65590 (b)(4)</i></p>	<p>[REPLACEMENT UNITS]</p> <p>No in-lieu fee program will be available to comply with the replacement housing obligations.</p> <p><i>Draft Policy Page 8</i></p> <p>[INCLUSIONARY UNITS]</p> <p>No in-lieu fee program will be available to comply with the inclusionary housing obligations.</p> <p><i>Draft Policy Page 10</i></p>	<p><input type="checkbox"/> 1. No in-lieu fee for replacement or inclusionary housing units.</p> <p><input type="checkbox"/> 2. Complete a study to determine and set an in-lieu fee for inclusionary housing units.</p> <p><input type="checkbox"/> 3. Complete a study to determine and set an in-lieu fee for replacement housing units.</p>	<p>The advantage of having an in-lieu fee program is that it would allow the County to capture funds for affordable housing when providing the units is determined to be infeasible. Requiring in-lieu fees is a method for obtaining funding for the County to provide affordable units when the lessee would otherwise be relieved of that responsibility because it is infeasible. However, the disadvantage is that the County would have to conduct a technical study in order to determine the appropriate in-lieu fee, which could be costly and time-consuming.</p> <p>Although the Mello Act specifies the parameters of in-lieu fee programs for replacement units, an in-lieu fee program for inclusionary units would be similar in that it could only apply when providing affordable units within three miles of the Coastal Zone is infeasible. The advantage of having an in-lieu fee program for both replacement units and inclusionary units is that it provides more funds for affordable housing. The disadvantage however, is that an in-lieu fee program shifts the responsibility for constructing the units to the County, and given the small number of projects coming forward for entitlements in the remainder of second generation Marina redevelopment, sufficient in-lieu fees may not be generated for a viable affordable housing project.</p>

# MELLO ACT POLICY OPTIONS

11/15/06

Issue	Mello Act	Draft County Policy	Policy Options <sup>1</sup>	Comments
<b>Right of first refusal</b>	Not specified.	None.	<input type="checkbox"/> 1. No provision for right of first refusal. <input type="checkbox"/> 2. Offer right of first refusal to the last income eligible person or family who last occupied a demolished or converted affordable residential unit upon and availability, and upon verification of income eligibility, on a first come, first basis.	The advantage of offering the right of first refusal is to give individuals and families of low or moderate income who are displaced by demolition or conversion the opportunity to return to an affordable replacement unit. The disadvantage is that it would be difficult to monitor and enforce.
<b>Rental exemption</b>	Not specified.	None.	<input type="checkbox"/> 1. No exemptions for rental projects. <input type="checkbox"/> 2. Conduct an upfront technical feasibility study to determine if rental developments are infeasible, and therefore exempt from Mello Act provisions.	The disadvantage of pursuing the rental housing exemption is that it requires a technical study that would be expensive and time-consuming to produce, and the exemption, if warranted, could result in substantially fewer affordable units than if there was no exemption.
<b>Relocation assistance</b>	Not specified.	None.	<input type="checkbox"/> 1. No provision of relocation assistance (because it is not required by the Mello Act or other statute). <input type="checkbox"/> 2. Provide relocation assistance under terms to be determined by the County and administered by the County CDC.	The advantage of offering relocation assistance is that it provides persons or families of low or moderate income, who are displaced as a result of demolition or conversion, with assistance to find and secure housing elsewhere. The disadvantage, however, is that it would require a significant financial commitment from the County or its lessees and would be difficult to administer.